

Thomas Irmiter

5/13/2014

Page: 1

1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2 COUNTY DEPARTMENT, LAW DIVISION

3 -----  
4 SOUTHGATE TOWNHOME ASSOCIATION,

5 Plaintiff,

6 vs.

File No. 12 1 003185

7 ALLSTATE INSURANCE COMPANY,

8 Defendant.  
9 -----

10  
11 DEPOSITION OF

12 THOMAS IRMITER  
13  
14

15 DATE: May 13, 2014

16 TIME: 9:58 AM

17 PLACE: Paradigm Reporting & Captioning

18 527 Marquette Avenue South

19 1400 Rand Tower

20 Minneapolis, Minnesota 55402  
21

22 REPORTED BY:

23 Elizabeth J. Gangl

24 Registered Professional Reporter

25 Notary Public, State of Minnesota

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES

ON BEHALF OF THE PLAINTIFF:

Christina M. Phillips, Esq.  
Childress Duffy  
500 North Dearborn Street  
Suite 1200  
Chicago, Illinois 60654  
312.494.0200  
cphillips@childresslawyers.com

ON BEHALF OF THE DEFENDANT:

Mark B. Ruda, Esq.  
Condon & Cook  
745 North Dearborn Street  
Chicago, Illinois 60654-4886  
312.266.1313  
mruda@condoncook.com

NOTE: The original deposition transcript will be  
delivered to Mark B. Ruda, Esq.

|    |   |      |
|----|---|------|
| 1  | INDEX   |      |
| 2  | WITNESS: THOMAS IRMITER                                 | PAGE |
| 3  | EXAMINATION BY MR. RUDA.....                            | 4    |
| 4  | EXAMINATION BY MS. PHILLIPS.....                        | 186  |
| 5  | FURTHER EXAMINATION BY MR. RUDA.....                    | 205  |
| 6  |   |      |
| 7  | OBJECTIONS: 49, 50, 56, 59, 62, 63, 66, 76, 78, 82, 85, |      |
| 8  | 89, 119, 120, 128, 129, 132, 149, 160, 161, 162, 164,   |      |
| 9  | 166, 170, 171, 172, 175, 200, 209, 210, 213, 215, 217,  |      |
| 10 | 218   |      |
| 11 |   |      |
| 12 | IRMITER EXHIBITS MARKED:                                |      |
| 13 | Exhibit 5: 000001-000770 = Thomas Irmiter file.....     | 5    |
| 14 | Exhibit 6: Thomas Irmiter Resume.....                   | 13   |
| 15 | Exhibit 7: Cook photos.....                             | 110  |
| 16 | Exhibit 8: Bruno photos.....                            | 111  |
| 17 | Exhibit 9: 7/24/13 letter to Tom Irmiter from           |      |
| 18 | Christina Phillips.....                                 | 111  |
| 19 | Exhibit 10: Southgate-FBS002709-714 = Photos of         |      |
| 20 | siding damage.....                                      | 112  |
| 21 | Exhibit 11: Southgate00947960 = 10/17/10 letter         |      |
| 22 | to Vanguard Community Management from Siebert           |      |
| 23 | Engineers.....  | 114  |
| 24 | Exhibit 12: Village of Streamwood Reroofing             |      |
| 25 | permit procedure.....                                   | 114  |

|    |   |     |
|----|---|-----|
| 1  | IRMITER EXHIBITS MARKED (Continued):                |     |
| 2  | Exhibit 13: Storm Events Database.....              | 186 |
| 3  | Exhibit 14: Southgate004097, 4096, 4098 = Photos    |     |
| 4  | of hailstones.....                                  | 191 |
| 5  | Exhibit 15: Handwritten notes of witness relating   |     |
| 6  | to building sizes.....                              | 200 |
| 7  |   |     |
| 8  | MOE EXHIBITS PREVIOUSLY MARKED AND REFERENCED:      |     |
| 9  | Exhibit 1: Plaintiff's Rule 213(f)(2) and           |     |
| 10 | Rule 213(f)(3) Expert Disclosures.....              | 42  |
| 11 | Exhibit 2: Southgate Josh Moe000001-248 = Joshua    |     |
| 12 | Moe file.....                                       | 187 |
| 13 | Exhibit 3: Forensic Building Science, Inc. Field    |     |
| 14 | Report for Initial Storm Damage Investigation..     | 46  |
| 15 |   |     |
| 16 |   |     |
| 17 |   |     |
| 18 | (Original exhibits attached to original transcript; |     |
| 19 | copies to counsel. Previously marked exhibits not   |     |
| 20 | attached.)  |     |
| 21 |   |     |
| 22 |   |     |
| 23 |   |     |
| 24 |   |     |
| 25 |   |     |

1 (Irmiter Exhibit 5 marked.)

2 THOMAS IRMITER,

3 duly sworn, was examined and testified as follows:

4 EXAMINATION

5 BY MR. RUDA:

6 Q. Sir, would you state your name for us, please?

7 A. Thomas Irmiter, I-R-M-I-T-E-R.

8 Q. This is to be the discovery deposition of  
9 Mr. Thomas Irmiter being taken pursuant to notice set  
10 today by agreement of the parties. Sir, my name is Mark  
11 Ruda, I'm going to be asking you some questions today.  
12 What I would ask is that you listen to each one of my  
13 questions and give me a spoken answer to each question,  
14 and if I ask a question and for some reason you didn't  
15 hear all of it, let me know that and I'll have the  
16 question repeated for you, okay?

17 A. That sound great.

18 Q. And if I ask a question that you don't  
19 understand, just tell me you don't understand it, that's  
20 my fault, and then I will give you a different question,  
21 all right?

22 A. Sounds good.

23 Q. Good enough. All right. Let me ask you, sir,  
24 in regard to this matter you've been retained to act as  
25 an expert witness, is that correct?

1 A. Correct.

2 Q. And who retained you?

3 A. Well, the association retained us through the  
4 Childress Duffy law firm in Chicago.

5 Q. So the attorneys for the association retained  
6 you or the association contacted you directly?

7 A. No, the attorneys contacted us.

8 Q. Okay.

9 A. Yeah.

10 Q. Would you take a look at what's been marked as,  
11 it's Exhibit No. 5, Irmiter Exhibit No. 5, and tell me,  
12 sir, the first thing I want you to do is look at -- the  
13 pages are Bates stamped at the top, you see the top right  
14 corner?

15 A. Yes, I do.

16 Q. That will make it, hopefully, easy. Look at  
17 Bates stamp page 17.

18 A. Yes.

19 Q. Okay. Do you recognize what appears at the  
20 beginning of page 17? It looks like it's a five-page  
21 document that's titled "Inspection Agreement." Do you  
22 recognize that?

23 A. I do, yes.

24 Q. What is that document?

25 A. This is an agreement to provide inspection

1 services at the Southgate Townhome Association, the 55 or  
2 56 buildings, I believe, at that complex, and issue a  
3 causation report.

4 Q. Okay. Is this a standard agreement that you  
5 enter into when you are retained to provide opinions in  
6 regard to legal matters such as we have pending here?

7 A. Yes, fairly standard.

8 Q. And the agreement is entered into with Childress  
9 Duffy, is that correct?

10 A. Correct.

11 Q. Does the agreement indicate it's entered into  
12 with the Southgate Townhome Association or does it  
13 indicate it's entered into with Childress Duffy?

14 A. It indicates that the project address is  
15 Southgate Townhome Association and is entered in with  
16 Childress Duffy.

17 Q. Okay. And does this contain the initial  
18 agreement of terms of compensation for the opinions that  
19 you are going to provide in this case?

20 A. Yes.

21 Q. Could you tell me, sir, and certainly you can  
22 refer to the agreement if you need to do so, but what are  
23 the charges in regard to your review and opinions in this  
24 matter?

25 A. Our costs were 22,500 on a fixed fee basis plus

1 flights and hotel and car rental.

2 Q. Okay.

3 A. And then that is for the inspection process and  
4 the issuing of the report. When that is done we are  
5 completed with our assignment, and any additional work,  
6 including depositions, trial preparation, appearances at  
7 trials, mediations, those types of things are all done on  
8 an hourly basis.

9 Q. Okay. And the hourly charge for your work is  
10 how much, sir?

11 A. Currently my hourly charge is 350 an hour.

12 Q. This agreement says 250, so it is 350 an hour  
13 today, or is it 250 an hour today?

14 A. It's 350. We raised our, those prices were  
15 raised in January of this year.

16 Q. Okay. And then in regard to Brian Johnson, who  
17 we will be deposing later, what is his charge per hour  
18 currently?

19 A. I think it's 225, if I remember right.

20 Q. And the agreement indicates 200 an hour, other  
21 work 225 per hour.

22 A. Right.

23 Q. But was his rate raised, too?

24 A. I believe it's 225 straight across the board  
25 now.



1 Q. So that's for reviewing, talking to lawyers,  
2 testifying, trial, that sort of thing?

3 A. Sure, yeah.

4 Q. Same thing for you, 350 an hour?

5 A. Yes.

6 Q. Do you charge portal to portal? By that I mean  
7 from when you leave the house until you're back home?

8 A. That depends. By that I mean the assignment,  
9 where we're going. My rate is 350 on everything that I  
10 do now.

11 Q. So, for example, this case is pending in Cook  
12 County in Chicago. You reside in Minneapolis, sir?

13 A. I do, yes.

14 Q. So if you have to testify at trial, will you be  
15 charging from when you leave your house in Minneapolis  
16 until you return; go to Chicago, time spent there  
17 testifying and your return to Minneapolis, is it going to  
18 be a fee from when you leave Minneapolis until you  
19 return?

20 A. Well, typically, yeah, the travel, the time, the  
21 45 minutes that I'll be in the airline will be accounted  
22 for. If I am, having done enough trials in the past,  
23 those are typically 10-hour, 12-hour days. It's not just  
24 the trial time.

25 Q. You have to make sure you get there in time, you

1 don't know when you're called and you're not sure when  
2 you're back?

3 A. Correct, but I'm not charging for when I'm  
4 sleeping in a hotel at night.

5 Q. I got it.

6 A. Okay.

7 Q. When you're off the clock after business hours?

8 A. After business hours.

9 Q. Other than traveling for --

10 A. Other than travel, unless after business hours  
11 we're working on trial prep for the next day.

12 Q. Okay. Now, sir, would you take a look at Bates  
13 stamp page 583 towards the bottom? Right around there  
14 (indicating). So 583.

15 A. Okay. Yes.

16 Q. If you look at the beginning of page 583, there  
17 are invoices, is that a good way to put it?

18 A. Yes.

19 Q. Okay. So just let's go through, the invoices  
20 begin at 583 and forward. The invoice at 583, which is  
21 dated 5/6 of 2014, that's one of the invoices that your  
22 firm has generated, is that correct?

23 A. Correct. And it appears on here that we are  
24 billing Mr. Johnson at 250 an hour.

25 Q. And what is this invoice for?

1           A.     This is for deposition prep, this is a large  
2     file to review, and prepare for this deposition.

3           Q.     Okay. Then would you look at Bates stamp page  
4     584, and this is another invoice dated 5/5 of 2014. What  
5     is this for?

6           A.     This is for the actual time to sit here today  
7     and have this engaging conversation with you.

8           Q.     Okay. I note in looking at it, the date is 5/5.  
9     That's not the date you did it. Today's 5/12.

10          A.     This is the date it was billed.

11          Q.     Okay.

12          A.     Yeah.

13          Q.     So I note here, for example, it looks like for  
14     you it's a half-day depo fee, \$1,300 flat rate, so it  
15     isn't -- is it by hour, or do you just charge a half day  
16     if that's how long it -- for every deposition?

17          A.     We bill half-day or full-day rates, set rates.  
18     That is pretty standard. We've established that in the  
19     last year and a half, two years.

20          Q.     Okay. Would you look at Bates stamp 585?

21          A.     Yes.

22          Q.     This is an invoice dated 11/26/13, and is that  
23     for, basically the charge for writing the report? Do you  
24     want to look back at your original contract?

25          A.     Yeah, I mean it's billed at the phase 2 portion

1 of it, so this is -- we don't, we don't track it that  
2 way. We don't, we don't track it that way.

3 Q. All right.

4 A. This is just the second part of the agreement  
5 that says when the report is issued we want to be paid  
6 our second amount.

7 Q. So the phase 2 charge was 11,250?

8 A. Correct.

9 Q. And then if you look at Bates stamp page 586,  
10 that's dated 7/23/13, and that reflects a charge of  
11 11,250. Is that the phase 1 charge then?

12 A. Yes.

13 Q. And I assume, as of the moment, that consists of  
14 all of your invoices that you've sent as of today?

15 A. Yes.

16 Q. Okay. So if, for example, you've got to come to  
17 Chicago and testify, is there a set fee then, such as  
18 you're doing for the deposition today?

19 A. No.

20 Q. So that's actual time spent, I take it then?

21 A. Yes.

22 Q. Now, sir, would you take a look at what's been  
23 marked as Exhibit No. 1? And if you need to, you can  
24 refer to that, but in particular I flagged, we'll be  
25 going back and forth, so you can put --

1 A. Yep.

2 Q. I flagged at the bottom your resume, if you need  
3 to refer to it.

4 A. Yeah, I will put on the record that that is  
5 dated at the top 1/7/14, and I have brought with me  
6 today, which is my typical practice, an updated  
7 curriculum vitae with a date of 5/13/14.

8 Q. All right. So let's, why don't we mark this.

9 MR. RUDA: Can we get copies of this?

10 (Break taken from 10:09 a.m. to 10:12 a.m.)

11 (Irmiter Exhibit 6 marked.)

12 Q. BY MR. RUDA: All right. Would you take a look  
13 at what's been marked as Exhibit No. 6?

14 A. Yes.

15 Q. Is this your current resume?

16 A. Yes.

17 Q. And I looked at the old one, so can you tell me,  
18 what did you add to it from the attached disclosure?

19 A. The additions would be related to pages 11  
20 through 15, and primarily that would have to do with  
21 first-party appraisals and depositions and/or affidavits  
22 filed in trials. That's a continuing process, and so I  
23 would have added probably, let's see, how many do we have  
24 on this document here? (Examining document.)

25 First-party appraisals is 58 on that document and

1 first-party appraisals is 82 on this document. So since  
2 January to -- actually, I have one this afternoon and  
3 that's on there, so after this deposition, so through  
4 today that's another, what, 30-some appraisals that I've  
5 done.

6 Q. Okay. And now that we're on the issue of  
7 appraisals, in terms of looking at your resume it appears  
8 that, for the most part, most of the appraisals in which  
9 you've been involved you've acted as the appraiser for a  
10 plaintiff, is that a fair way to put it, the overwhelming  
11 majority of them?

12 A. Yeah, there's one instance where a district  
13 court judge here in Minnesota appointed me as appraiser  
14 for the insurance company, North Star. They went to  
15 court seeking to appoint an umpire, which often happens,  
16 and the judge noted that they hadn't appointed an  
17 appraiser yet for the insurance company, and I was on the  
18 list as an umpire and he appointed me as appraiser.

19 I will also put on the record that in all of the  
20 instances that are on there where I have been named as an  
21 umpire, I have been selected by the appraiser or  
22 appraisers that I have been adverse to from the other  
23 side. So in every instance I have been recommended by  
24 them and have been suggested to be used as a neutral  
25 umpire.

1 Q. In order for someone to be selected as an  
2 umpire, the appraisers have to agree on who the umpire  
3 is, and if they cannot the court will select an umpire,  
4 right?

5 A. Typically, yes. There are a number of times  
6 where the umpire is not needed even though they're  
7 selected.

8 Q. You only appoint an umpire if the parties can't  
9 come to agreement? That is, the appraisers can't?

10 A. Well, I would disagree with that approach. At  
11 least in the appraisals I'm involved in, we name our  
12 umpire, we put that umpire on the record, we meet and  
13 then we take our differences, if there are any, to the  
14 umpire.

15 Q. It's not bad practice to name an umpire  
16 immediately just to speed up the process if there's  
17 disagreement, but if the appraisers agree, the umpire is  
18 not involved?

19 A. Correct. Absolutely. Takes two out of the  
20 three on the panel to sign the order.

21 Q. Did you add to the depositions or affidavits  
22 that you've filed?

23 A. Yeah, I think there's been a few depositions,  
24 two or three, I think.

25 Q. Are they added at the end then?

1 A. Yes.

2 Q. Is that how you do it, chronologically?

3 A. Yes.

4 Q. All right. So tell me, how long have you been  
5 engaged in the practice of acting as an expert witness?  
6 When did you first start doing that?

7 A. 1984, I think. '85 is the first case I worked  
8 on.

9 Q. What sort of expert were you initially? What  
10 did you --

11 A. First case I worked on I represented Marvin  
12 Windows in a product defect case. They were on the  
13 defense part of that. In fact, most of the cases I did  
14 initially were on the defense side.

15 Q. Now in terms of your educational background,  
16 sir, let's turn to your resume, which is page 7, I think  
17 it has education?

18 A. Yes.

19 Q. All right. So you graduated, I take it, from  
20 Hamline University, is that correct?

21 A. Yes.

22 Q. What's your degree in?

23 A. Bachelor of arts degree in English.

24 Q. And you graduated in 1979?

25 A. I did, yes.



1 Q. By the way, what's your date of birth?

2 A. 10/19/57.

3 Q. So you graduated at 22, I take it, or you were  
4 going to be 22?

5 A. Yes.

6 Q. Standard high school, et cetera?

7 A. Took a little time off but, yeah. Didn't go  
8 straight through.

9 Q. And so after you graduated from high school, did  
10 you take any additional -- strike that. After you  
11 graduated from college, did you take any master's program  
12 courses or pursue an advanced degree?

13 A. Yes. I began pursuing an advanced degree in,  
14 master's in engineering at the University of Wisconsin.  
15 I tested out of, based on my experience, two of the  
16 first-level project management courses and progressed  
17 into the most advanced one that they offered. I took  
18 that class, passed that class. I think I have four  
19 credits towards my master's degree in engineering. And  
20 then since then have not continued pursuing that. I've  
21 been too busy.

22 Q. All right. So you do not hold a master's degree  
23 in engineering?

24 A. I do not.

25 Q. I also note on your education you have something

1 here for AWCI International. What is that?

2 A. That's the American Wall and Ceiling  
3 International. This was a certificate class that I took  
4 on EFIS and stucco water intrusion issues, which was part  
5 of our practice, and still is today.

6 Q. So I'm correct that the college degree you hold  
7 is an English degree, correct?

8 A. Yes, it is.

9 Q. And no other degrees of any kind, right?

10 A. Correct.

11 Q. Now in terms of your current position, what's  
12 your current employment?

13 A. I work for Forensic Building Science. I own  
14 that company.

15 Q. Did you found the company?

16 A. I did, yes.

17 Q. When did you found it?

18 A. 2004. We just celebrated our 10th anniversary  
19 last week.

20 Q. And what is Forensic Building Science,  
21 Incorporated?

22 A. Forensic Building Science is an inspection  
23 company that deals with all types of building failures;  
24 collapses, fires, construction defect, product failure.  
25 We also do some trip-and-fall personal injury type work.

1 We've done some OSHA-related work in terms of personal  
2 injury type things. Let's see, what else. I have, we  
3 have done in the last year, I have in particular, done  
4 some work on some bad faith claims in terms of the claims  
5 handling process and the inspection process with a firm  
6 out of Houston and issued reports on that.

7 Q. All right. How many employees does FBS  
8 currently have?

9 A. Well, counting my wife and I as employees of the  
10 company, we have 11.

11 Q. What's your wife's position?

12 A. She basically runs our marketing.

13 Q. So the other nine employees that you have, what  
14 type of positions do they hold? What are they?

15 A. Yeah. Three, I have three registered  
16 professional engineers on staff. Brian Johnson, our  
17 chief engineer, is licensed in, I think, 18 states.  
18 Peter Korolchuk is our chief operating officer, he's a  
19 licensed PE in Minnesota and has applied for licensing in  
20 those additional 18 states, and then Shawn Peatrowsky  
21 runs our Dallas office, and he's licensed in the states  
22 of Texas, Colorado and Phoenix, and then Ryan  
23 Nierengarten and Jim Irmiter, my son, are both field  
24 technicians and do inspections for us. Ryan, for  
25 example, has gone through the Haag certification classes,

1 does a lot of our inspections, helps with report writing.  
2 And then I have three office administrative people who  
3 keep us all in line.

4 Q. Now prior to founding, and it's okay if I call  
5 it FBS?

6 A. Yeah, please.

7 Q. My guess is that you probably call it that, too?

8 A. We do.

9 Q. Prior to founding FBS, where were you employed,  
10 sir?

11 A. Advanced Building Solutions for just short of  
12 one year. Advanced Building Solutions was a bit of the  
13 incubator, if you will, for the company that FBS is  
14 today. It was primarily a building causation and  
15 inspection company, failure company.

16 Q. And you weren't an owner, you were employed  
17 there?

18 A. That's correct, I was not an owner.

19 Q. And when did you leave that job?

20 A. Left that job the last day of April of 2004, and  
21 opened the doors of FBS May 1st, the next day.

22 Q. Prior to working at Advanced Building Solutions,  
23 Inc., where did you work at?

24 A. Donnelly Management Services.

25 Q. What kind of company is that?

1           A.     Donnelly Management Services was a spin-off  
2     company for Donnelly Stucco, the company I worked at  
3     before that. That was essentially the launching pad, if  
4     you will, for the company that FBS is today. It was the  
5     forensic inspection business that was set up by Donnelly  
6     Stucco primarily focused on exterior envelope and  
7     cladding window failures related to construction defects.

8           Q.     And before you worked at Donnelly Management --  
9     well, strike that. At Donnelly Management Services, what  
10    exactly did you do? What was your job there?

11          A.     Pretty much what I do today at Forensic Building  
12    Science. Led the inspection effort. Served on all of  
13    the cases that we worked on as the designated expert. We  
14    did estimating, we produced project specifications, and  
15    about 40 percent of the matters that we worked on, our  
16    clients pursued what we called fix and chase back then,  
17    where once the, once all the notices had been sent out,  
18    everybody had a chance to do their inspections, they  
19    actually dug into their own pockets and fixed their  
20    buildings or their residences, and we managed or oversaw  
21    the reconstruction process as a third-party owner's rep.

22          Q.     Basically as a project manager?

23          A.     Yeah, and we still do that today under a sister  
24    company that I have called Lindsay Consulting Group.

25          Q.     How long has Lindsay Consulting Group been in

1 operation?

2 A. About five years.

3 Q. And you're the owner?

4 A. My wife owns it. I own 50 percent of it.

5 Q. And what are your job duties at Lindsay  
6 Consulting Group, if any?

7 A. Well, Lindsay Consulting Group is really a  
8 holding company, I mean, for lack of a better word. So  
9 when someone wants to retain us to perform site  
10 observations or help manage a reconstruction of their  
11 property, we're retained to do that. So we'll actually  
12 put together a Request For Proposal, RFP, we'll submit it  
13 to the marketplace, we'll get bids, review all of those,  
14 we'll review contracts and we'll establish timelines for  
15 the contractors, make site visits, we'll handle the  
16 payment draws, change orders, all of those kinds of  
17 things.

18 Q. So for example, in regard to Southgate, if you  
19 were, if they wanted you to manage that project and  
20 organize it in terms of any repairs, replacements to be  
21 done, you would do that out of Lindsay Consulting Group,  
22 not out of Forensic Building Science?

23 A. Correct.

24 Q. At Donnelly Stucco Sales, what were your job  
25 duties there?

1           A.     I basically joined Donnelly when they were on a  
2     pretty significant downward slope. Tom Donnelly is about  
3     15 years older than I am, our families had done business  
4     together for three generations, and I found myself  
5     needing a job. Went to work for him and helped him  
6     basically reorganize his company. He handled the  
7     production end and I handled the sales and marketing end,  
8     and we basically re-jumpstarted it over a two-year  
9     period, and part of that was doing some, getting into  
10    some water intrusion issues on stucco buildings, and  
11    that's where we spun off the Donnelly Management Company  
12    to keep an arm's length away from, from that.

13           Q.     Were your primary job duties at Donnelly sales  
14    and marketing of their products?

15           A.     Sales, marketing. I did get into some, just  
16    because I grew up in it, I did do some field work for  
17    them. I got out onto some of the projects that, where  
18    there was, you know, construction defect issues that they  
19    were working on, and actually worked in the field once in  
20    a while because I like doing it.

21           Q.     How often did Donnelly Stucco get involved in  
22    construction defect issues? I guess -- I'll strike the  
23    question. What percentage of your time was spent on  
24    construction defect issues at Donnelly Stucco Sales?

25           A.     Well, it started out initially as zero until I

1 ran into a 16,000-square-foot house on Lake Minnetonka  
2 here and they wanted to recolor their stucco, and I  
3 indicated to them in about the first five minutes that  
4 they had a bigger issue probably, and so that was in  
5 January of 2002, little over a year after I joined  
6 Donnelly. So in that first year, zero percent of it. I  
7 focused primarily just on the core business. And then  
8 that second year at Donnelly is when we really, I would  
9 say almost a hundred percent of my work in that second  
10 year ended up being in that area because I had trained  
11 additional salespeople to handle the other stuff.

12 Q. Did that matter that you indicated in January  
13 2002, where you discovered a house that had issues, water  
14 intrusion issues, did that turn into a lawsuit of some  
15 kind?

16 A. Yeah.

17 Q. What was the name of that?

18 A. Tony and Carolyn Johnson.

19 Q. Did you act as an expert on their behalf in that  
20 case?

21 A. I did, yes.

22 Q. Now prior to working at Donnelly Stucco Sales,  
23 where were you employed at?

24 A. I owned Irmiter Contractors & Builders.

25 Q. How long did you have Irmiter Contractors &



1 Builders?

2 A. 17 years.

3 Q. And what did Irmiter Contractors & Builders do?

4 A. We were, when I formed the company I purchased  
5 the company from my father, so it was a four-generation  
6 business. He had a, I can't remember if it was an LLC or  
7 a limited, or a sole proprietorship, but I purchased it  
8 in '84 and expanded it from a five-person operation up to  
9 about 70 employees at its height, and we were a  
10 design/build firm. We did residential and light  
11 commercial construction. We did some ground-up,  
12 brand-new construction, and a lot of historic restoration  
13 kinds of things.

14 Q. Primarily residential?

15 A. Yeah, primarily. Although some of the  
16 residential stuff we were working on, I mean they were  
17 10,000-square-foot homes and we were building  
18 5,000-square-foot additions. I mean they were built out  
19 of steel and concrete, very much like commercial in some  
20 of them.

21 Q. So was it primarily restoration, remodeling work  
22 as opposed to build from scratch?

23 A. Primarily. We did design a 12,000-square-foot  
24 house in Edina ground up and built that, a brick house.

25 Q. At Irmiter Contractors & Builders, Limited

1 during that period from '84 to 2000, did you do any  
2 construction defect consulting with regard to legal  
3 matters?

4 A. Yeah, I started, when I started that first case  
5 in '84 for Marvin, I did probably five to ten cases a  
6 year as an expert. Primarily because I was the, I ran  
7 the ethics committee for the National Association of the  
8 Remodeling Industry, Minnesota chapter, and as the  
9 chairman of that ethics committee I dealt with internal  
10 disputes between subcontractors and contractors in the  
11 association. And through my work in that area I was  
12 introduced to various attorneys over the years who had  
13 problems with projects, and so I was brought in to work  
14 on those. A couple of cases I was named by a district  
15 court judge here to serve as an official arbitrator on  
16 construction defect cases to try to settle those, which  
17 is kind of interesting work, so I did about ten a year.

18 Q. What sort of construction defects did you do  
19 during that time period when you were at --

20 A. Boy, everything.

21 Q. Well, tell me what you did.

22 A. Sure. We did foundation failures, we did  
23 improper, we did a lot of workmanship issues, design  
24 issues, installation of products that were improper, did  
25 a lot of roofing, roof leak issues, roof flashing issues.

1 Let's see. Got into some mechanical issues.

2 Q. Meaning what?

3 A. Well, one house that I remember working on back,  
4 this is back when whole-house ventilating systems called  
5 Van-EE systems were first coming into play, and one home  
6 had developed a severe mold problem. And after bringing  
7 in numerous experts, including HVAC mechanical engineers  
8 and contractors, I was the only one to ascertain that the  
9 system had been put in backwards and was literally  
10 pumping moisture-laden air into the house causing mold  
11 everywhere. So, again, it was just a variety of all  
12 kinds of things.

13 Q. So besides what you've indicated, foundation  
14 failures, improper workmanship, design issues,  
15 installation issues, roof issues and mechanical issues as  
16 you've described the ventilation system, anything else  
17 that you can recall that you did?

18 A. Boy. Did a slip/fall case for the Kahler Hotel  
19 down in Rochester, Minnesota and ascertained that they  
20 had put in all of the wrong shower doors. They were not  
21 a laminated-over-tempered shower door, and they had used  
22 the wrong type tile on all the floors. I worked on one  
23 of those.

24 Q. Anything else that you can recall?

25 A. No, I can't recall.

1 Q. Now at Donnelly Management Services,  
2 Incorporated, were most of the construction defect issues  
3 related to water intrusion and/or mold in houses?

4 A. Yes, yes. That's how they started, I think, the  
5 majority of them.

6 Q. What percentage would you say Donnelly  
7 Management Services were water issues/mold, because they  
8 go obviously hand in hand? What percentage would you say  
9 your consulting was in regard to acting as an expert  
10 while at Donnelly Management Services, Inc. concerning  
11 water intrusion and mold?

12 A. Hundred percent.

13 Q. Now do you have any training in the insurance  
14 industry of any kind?

15 A. I've never worked for an insurance company so,  
16 no, only what I have picked up as a result of the  
17 practice that I'm in.

18 Q. Okay. So --

19 A. And let me qualify that if I can. Prior to  
20 Minnesota two years ago codifying, the insurance  
21 commissioner coming down on the storm chasers who were  
22 coming into town and serving as public adjustors, and I'm  
23 not a public adjustor, for about a six-year period we  
24 engaged insurance companies directly, so I spent hundreds  
25 of cases where I would, we would go out and investigate

1 an issue and then direct the homeowner to go ahead and  
2 contact their insurance company, and then we would  
3 typically meet an adjustor out at the site, show them the  
4 damages that we were seeing, and in some instances they  
5 would say, well, can you produce an estimate for us, and  
6 we would do that, and then they would typically issue a  
7 repair, a check for repair. We did that on an hourly  
8 basis. We weren't tied to the outcome like a public  
9 adjustor or a contractor, we were literally just  
10 providing an inspection service and a report.

11 Q. So you say for a six-year period you did what  
12 you described. Did that stop at some point?

13 A. Well, we could still do it today. We just made  
14 a decision not to do that because we're so busy. I mean  
15 we're busy doing so many other things in so many other  
16 states that we really don't engage in that kind of work  
17 anymore. Now, for example, I had a call yesterday from  
18 someone who said they think they've got possible roof  
19 collapse from ice and snow from this last year. They  
20 were up in the attic, they've got all kinds of mold. I  
21 said, what have you done? Well, I called my insurance  
22 company and they sent somebody out and they said there's  
23 no coverage for this. I said, well, why don't you -- I  
24 gave them the name of three public adjustors. I said why  
25 don't you call these public adjustors, give them a call.

1 And then it may come back to us later, who knows, but  
2 that's the not the kind of business that we're going to  
3 try to drum up.

4 Q. You mentioned a moment ago that the insurance  
5 commissioner codified something. What was that reference  
6 to?

7 A. Well, maybe codified isn't the correct word, but  
8 he sent out a bulletin to all licensed contractors in the  
9 state of Minnesota and essentially said that contractors  
10 are forbidden by statute from directly engaging  
11 homeowners and putting homeowners under a power of  
12 attorney, like a public adjustor might do or can do in  
13 the state of Minnesota. It's interesting because even  
14 though they are not supposed to do that, we still see it  
15 happening. It's all over.

16 Q. When did the insurance commissioner issue that  
17 bulletin?

18 A. It was after a 2010, August 2010 or September  
19 2010 storm, so probably would have been November of 2010.

20 Q. Okay.

21 A. Somewhere in that range. 2011, I think.

22 Q. Is that when your company stopped doing what you  
23 described, which was, you know, being engaged to some  
24 extent directly with insurance companies in regard to  
25 assessment and evaluation of losses to homeowners'

1 properties or commercial owners' properties?

2 A. Yes. We directed clients who called us to  
3 either engage the appraisal process or to contact a  
4 public adjustor or to contact an attorney.

5 Q. In regard to your experience in the insurance  
6 industry then -- strike that. In regard to your  
7 insurance experience, let's make it that broad, your  
8 experience is based upon just your interactions with whom  
9 over the years?

10 A. Well, my interactions with hundreds of  
11 adjustors. We hired a law student out of William  
12 Mitchell five years ago, Brian Lake, he's now an  
13 attorney, and we hired Brian for a five-month period.  
14 And we had Brian, during that period, review every  
15 insurance policy for every client that we were working  
16 with, their homeowner's policies, and put together a  
17 pretty significant report for us about coverages,  
18 coverage issues, cases, case laws, those kinds of things.  
19 And he and I worked on that project together, and of  
20 course that was important for me to understand generally  
21 what coverages are, where there's coverages, where there  
22 aren't coverages, those kinds of things. And then just  
23 generally working with law firms you learn a great deal  
24 about those kinds of things.

25 So in other words, have I sat and read through a

1 90-page insurance document for a homeowner with all of  
2 the declaration pages and all of the exclusions and all  
3 of the adds-on? Yes, I know how to do that. I  
4 understand that. I understand where to look for the  
5 exclusions and the inclusions and those kinds of things.

6 Q. So tell me if there's anything else. So your  
7 knowledge of insurance-related matters is based upon your  
8 interactions with adjustors over the years and a law  
9 clerk's review of all your existing clients' policies and  
10 some sort of memo he did, and you also did a report that  
11 you did together regarding those coverages and the law  
12 that applies to those coverages, and in addition you said  
13 your interactions with law firms, too?

14 A. Correct. And I've attended, I've attended the  
15 WIND conference in Florida, I've attended three NAPIA  
16 events where I've sat in, you know, they're four-,  
17 five-day events where I've sat in seminars that are being  
18 taught by attorneys, that are being taught by adjustors  
19 on both sides of the fences and listened to them, for  
20 example, talk about the appraisal process, talk about how  
21 coverage, where is coverage triggered, when is coverage  
22 triggered, those kinds of things. And I continue to  
23 attend those kinds of events.

24 Q. Now in regard to your other experience, or prior  
25 to the time that you began working, started your, well,



1 purchased your, the company in 1984, it appeared that,  
2 you know, you had worked as an apprentice, a carpenter.  
3 Is that working part-time while you attended school?

4 A. Yeah, I started, the very first project I worked  
5 on with my father was roofing. In the summer we -- I  
6 have six brothers, and so he had a natural crew. And so  
7 starting March 15th until about November 1st we did all  
8 types of roofing. That was the main business that he was  
9 involved in. And back then we did insurance work. A lot  
10 of our work came from insurance claims to replace roofs  
11 after storm damages, tornadoes, those kinds of things.  
12 So, yeah, my first job at age 13 was climbing around on  
13 roofs and tearing off shingles or tearing off flat roofs  
14 and putting those products in.

15 Q. Are you a union member of any --

16 A. No, we were a nonunion shop.

17 Q. Nonunion shop?

18 A. Yeah. We paid union scale, we followed all  
19 those guidelines. We followed those guidelines in terms  
20 of the number of hours that you had to put in as an  
21 apprentice before you became a journeyman and those kinds  
22 of things.

23 Q. So you had training as an apprentice, as a  
24 carpenter, and that's --

25 A. Well, my dad --

1 Q. -- the initial training in the trades I take it?

2 A. Well, my dad went to Dunwoody here, which is a  
3 trade school, and he had training in the late 1930s in  
4 four different trades, and so he taught all of his sons  
5 those various trades. So carpentry was one of them,  
6 cabinetmaking was one of them. The mechanical trades,  
7 electrical, plumbing and heating was all encompassed in  
8 one of them, and then the other one was called the  
9 decorating trade, which is wallpapering, painting,  
10 plastering, staining, varnishing, refinishing, all those  
11 kinds of things, so those were the primary four trades  
12 that I learned. In the carpentry trade, because until I  
13 bought the company in '84 we did everything inhouse; we  
14 dug our own holes, we put in our own foundations and we  
15 did ground up. As I developed the construction company,  
16 we began to subcontract more of that out as the markets  
17 changed over the years.

18 Q. Currently do you hold any licenses of any kind  
19 from any governmental authority such as State of  
20 Minnesota, State of Illinois, et cetera? Are you  
21 licensed anywhere in the area?

22 A. Yes.

23 Q. Where do you hold licenses?

24 A. I'm licensed in the state of Minnesota as a  
25 building code official, and that is with the Department

1 of Labor and Industry.

2 Q. Minnesota Department of Labor and Industry?

3 A. Yes.

4 Q. And what does that license entitle you to do?

5 A. I could go and work for any municipality in the  
6 state. I could, based on my training and education and  
7 the number of points that I have accumulated, I could run  
8 a building department, I could be the chief building code  
9 official in a city, in a municipality or something like  
10 that if I wanted to.

11 Q. For all types of construction; residential,  
12 commercial, et cetera?

13 A. Yes.

14 Q. You also could go out to a site, I take it, take  
15 a look at a building and process and evaluate the same in  
16 terms of code analysis?

17 A. Exactly.

18 Q. Do you hold any other licenses of any kind?

19 A. No. I hold two certificates with the  
20 International Code Council out of California. One is a  
21 building inspector and then one is a property maintenance  
22 inspector.

23 Q. All right. So in regard to any other licenses  
24 from governmental authorities the answer is no, is that  
25 correct?

1 A. Correct.

2 Q. Okay. What's the International Code Council?  
3 Is there a larger name? What is that?

4 A. It is the International Code Council.

5 Q. Okay.

6 A. In 2000, through an act of the U.S. Government,  
7 we, the United States decided to take five or six  
8 different building codes from around the country and fold  
9 them into one building code called the International  
10 Residential Code and the International Building Code, and  
11 there's a bunch of subcodes that go underneath that for  
12 plumbing, heating, electrical, existing buildings, those  
13 kinds of things, and we now have, all 50 states have now  
14 adopted the international codes. It took about five, six  
15 years to get them all in line with that, but now  
16 typically -- and Minnesota is one of the only states that  
17 actually licenses and trains building code officials.

18 So as part of our practice, it's important to  
19 understand what those codes are. So when I go into  
20 Chicago, for example, or go into Streamwood, one of the  
21 very first things that we do in a project like this is we  
22 pull up the building codes, take a look at those and see  
23 what kind of effect those might have on scopes of repair.

24 Q. And the certifications you said that you have,  
25 when did you obtain a certification in the, as a building

1 inspector?

2 A. I think it was '07.

3 Q. Does it have to be renewed?

4 A. Yes.

5 Q. Has it been renewed?

6 A. Yes.

7 Q. When was it most recently renewed?

8 A. I can't recall. I know they're current.

9 Q. Do you know how to check on your certifications?

10 Is there some site that you can go to?

11 A. International Code Council. ICC, yeah.

12 Q. And then --

13 A. I have to take 24 hours of continuing education  
14 to keep my license here in Minnesota, and as part of  
15 that, then I have to turn in credits to ICC Code Council  
16 as well.

17 Q. So in taking, in order to be a licensed building  
18 code official in Minnesota, you have to do continuing ed,  
19 and that can count towards your recertification?

20 A. Yes, absolutely.

21 Q. Okay. When did you become a property  
22 maintenance inspector, get that certification?

23 A. '07, same time frame.

24 Q. Does it also have to be renewed periodically?

25 A. Yes.

1 Q. Has it currently been renewed most recently?

2 A. I believe it is.

3 Q. And in order to get those certifications, what  
4 exactly did you have to do?

5 A. Well, studied. There's a bunch of books that  
6 you look at and then you sit down and you take an online  
7 exam and you have to pass it. If you don't, you can  
8 retest, I think, three months later. I passed on both  
9 times so I didn't have to retake.

10 Q. How long does each exam take?

11 A. I think a couple hours. Maybe it's a three-hour  
12 limit. I can't remember.

13 Q. Now in regard to this particular matter, as  
14 we've already covered, you were retained by Childress  
15 Duffy. Your retention was, according to the contract, on  
16 July 23 of 2013. Was that your first contact with  
17 Childress Duffy or was there some prior contact?

18 A. On this project?

19 Q. Yes, on this matter.

20 A. It may have been a couple weeks before that. I  
21 mean it's typically when someone is calling us or talking  
22 to us about a project, the germination period from  
23 initial contact to agreement is a couple of weeks.

24 Q. Let me ask. Other than this project, have you  
25 ever been retained by Childress Duffy previously in any

1 matter to provide advice concerning some sort of a legal  
2 dispute or issue?

3 A. Yes.

4 Q. How many times?

5 A. Probably 25 times, I would think, over the  
6 years.

7 Q. Since when?

8 A. 2006 was the first matter that I worked on with  
9 them. And back then, I don't know that, I can't tell you  
10 if we were retained by them or retained by clients.  
11 Probably was retained by clients back then. I just don't  
12 know.

13 Q. So when you say 25 times, you mean they were the  
14 law firm involved --

15 A. Yes.

16 Q. -- 25 times, and maybe they retained you  
17 directly and maybe sometimes it was the actual client of  
18 theirs?

19 A. Right.

20 Q. Okay. Are all the times that you've been  
21 retained by them identified in your resume?

22 A. Yes.

23 Q. Okay.

24 A. Well, no, because my resume doesn't go back, it  
25 only goes back four years. Doesn't go back any further

1 than that.

2 Q. All right. Now have you been retained by  
3 them -- in how many different states have you been  
4 retained by them to act as some sort of an expert?

5 A. Eight or nine.

6 Q. Besides -- I assume Minnesota is a state you've  
7 been retained in, is that correct?

8 A. Yes.

9 Q. Okay. And obviously Illinois, our case is  
10 pending in Illinois, correct?

11 A. Yes.

12 Q. Besides Minnesota and Illinois, what other  
13 states?

14 A. New York, New Jersey, Florida, Texas, Colorado.

15 Q. That's seven, I think.

16 A. I don't know if there's an Iowa or South Dakota.  
17 There might be an Iowa or South Dakota in there, too. I  
18 just can't remember.

19 Q. Other than this matter pending in Illinois, have  
20 you ever been retained by them to act as an expert in  
21 Illinois, that is Childress Duffy or one of their  
22 clients?

23 A. Yes.

24 Q. How many times?

25 A. About six cases I think with them in Illinois.



1 Q. Are any of those six cases identified in the,  
2 your list here?

3 A. (Examining document.) I don't think so. No, I  
4 don't think they've germinated to that point yet.

5 Q. Okay. Do you mean you're a consulting expert  
6 other than this one?

7 A. No, we've issued reports, they just, there's  
8 just been no depositions, there's been no affidavits  
9 filed in federal court that would list on here.

10 Q. Okay.

11 A. No, we've issued reports, we've issued  
12 estimates, we've done all that stuff.

13 Q. Is this the first case for Childress Duffy that  
14 you've given a deposition in that's pending in the state  
15 of Illinois?

16 A. Yes.

17 Q. Have you been retained by other clients, whether  
18 Childress Duffy or some client that they don't represent,  
19 meaning somebody separate from them as we've described  
20 it, in the state of Illinois?

21 A. We have a Minnesota project that the law firm is  
22 from Chicago, so I'm not sure how to answer that  
23 question.

24 Q. So it's a matter pending in Minnesota?

25 A. It's a matter pending in Minnesota but we're

1 retained by a Chicago law firm. It's actually for  
2 Cincinnati Insurance is on the defense side, so I don't  
3 know how to answer that. But, no, I don't recall any  
4 other Illinois work that we've done with other firms.

5 Q. Now would you take a look at, again, put your  
6 resume aside for a moment.

7 A. Yep.

8 Q. Exhibit No. 1, and your report, sir, I tabbed it  
9 there.

10 A. Yep.

11 Q. Please take a look at that. Is that the  
12 report -- let's make sure it's the right one. I assume  
13 it is, but is that your report?

14 A. Well, yes, this is a report that is co-authored  
15 by Brian Johnson and I, yes.

16 Q. Now in looking at the report, I believe it is 37  
17 pages long, is that correct, sir?

18 A. Yes.

19 Q. All right. And on page 37 of 37, how they're  
20 designated, it appears that the report is signed by you  
21 and dated January 7th of 2014, is that correct?

22 A. Yes.

23 Q. Is that when this report was completed,  
24 January 7th of 2014?

25 A. Yes.

1 Q. Now can you tell me, sir, have you -- well,  
2 strike that. When this report was completed, who did you  
3 transmit it to?

4 A. The law firm.

5 Q. Anyone else?

6 A. No.

7 Q. Do you know when it was transmitted?

8 A. It would have been probably right after this. I  
9 mean probably that day.

10 Q. Is your regular practice to send it the day it's  
11 done?

12 A. Yeah.

13 Q. And the lawyer that you've been dealing with  
14 there, is that Ms. Phillips in terms of your  
15 interactions?

16 A. Yes, it is.

17 Q. Okay. Now besides this report, did you prepare  
18 any drafts of this report prior to when this one was  
19 prepared?

20 A. Oh, yes. Yeah, there's always draft reports  
21 that we do.

22 Q. How many draft reports did you do?

23 A. Maybe I can explain our process and that will be  
24 an easier way to do that. When we receive an assignment  
25 like this, Martha Miller in our office, who is one of our

1 project managers, will take the information and put it  
2 into files. She will then create a draft report  
3 template, and that will include, for example, the items  
4 on page 1, which is the storm dates, the storm details.  
5 She'll do the research on that. She would -- so all of  
6 the items that you would see up to 1.5, up through 1.5,  
7 she would put into the report. The items that are in  
8 1.5, which are all of the technical reports, would  
9 typically be much larger than that and they would be  
10 highlighted in yellow, meaning that that's something that  
11 I need to review and Brian needs to review to determine  
12 which reports we're going to include. So it's a much  
13 larger --

14 Q. You basically use a template where everything  
15 that you believe is likely is plugged in there and then  
16 you remove it or modify it?

17 A. Yeah. I mean we, for example, we looked at over  
18 a million square of roofing last year, so this isn't the  
19 first three-tab shingle roof with vinyl siding project  
20 we've looked at. So we're going to use other reports  
21 that have been created to put this information in there.  
22 She's not making the decision of what goes in, she's just  
23 saying this is all the stuff we've used in the past.  
24 Then when the inspection is completed, the sections that  
25 actually show the data that we gathered on the site, that

1 would have been gathered by me when I was there, by Josh  
2 Long when he was there, by Jim Irmiter when he was there.  
3 That is then put into the report from their field notes.

4 Q. And where does that data appear in the report,  
5 since we're going through it?

6 A. That would be, for example, starting in  
7 Section 1.7, "Inspection data." That would be Section  
8 2.0, "Site Observations," and then that would be Sections  
9 2.41 all the way through to, boy, 2.5, these are all  
10 these building observations, up until the "Causation  
11 Statement."

12 Q. Which is?

13 A. 4.0.

14 Q. 4.0, thank you.

15 A. Yeah. And I apologize here. It looks like when  
16 this thing got printed into pdf the numbering is off.  
17 It's kind of crazy. So 4.0 should be the causation.  
18 That is done by Brian Johnson with input from me in terms  
19 of the causation, and then the comments, the  
20 requirements, the conclusions, that's then a process that  
21 goes back and forth between Mr. Johnson and myself with  
22 track changes. And then the final report, when it is  
23 signed, is issued, and all of the draft reports, all of  
24 the track change reports are all discarded.

25 Q. So your file does not contain any draft reports

1 at this point, sir, is that correct?

2 A. No, no.

3 Q. Would you take a look at what's been marked  
4 previously as Moe Exhibit No. 3?

5 A. Yep.

6 Q. And tell me do you recognize what that is? Take  
7 a look at it.

8 A. Yes, I do.

9 Q. What is that?

10 A. This is a report that was sent to Josh Moe when  
11 Josh was designated by the Childress firm as the person  
12 who was going to put together the cost on this. We do  
13 cost estimates, we're asked to do those on a lot of our  
14 projects. We were not asked to do cost estimates in this  
15 case. There was a tight timeline at the end to get all  
16 of this information pulled together between our firm and  
17 Mr. Moe's firm, who was doing the estimating, so this was  
18 sent out to him as one of the last drafts. It's about 95  
19 percent comparable to the final, and it doesn't change  
20 any of the information that he would have needed to put  
21 his estimate together. And so this is, this was sent to  
22 him in that form.

23 Q. What is that draft dated?

24 A. I don't know if it is because it's not signed.  
25 Yeah, there is no date on it. So, no, don't know.

1 Q. Do you know when that draft was sent to Mr. Moe?

2 A. It would have been obviously prior to our final  
3 on 1/17/14, and it would have been -- or 1/7/14 -- and it  
4 would have been before he finalized his estimate, so  
5 sometime in that time frame.

6 Q. Do you have any idea when?

7 A. No. As I sit here today, I don't.

8 Q. So you were retained in July, the final report  
9 was done the following January, so it's sometime between  
10 July and January?

11 A. Well, my guess is -- yeah, definitely sometime  
12 between that, that's obvious, but it would be more  
13 towards the end of that. It probably would have been  
14 January. Or I mean December. It would have been late.

15 Q. And how was that transmitted to Mr. Moe?

16 A. Email.

17 Q. And did you send it?

18 A. I didn't.

19 Q. Okay.

20 A. One of staff would have, I think.

21 Q. We've asked for all the emails and things, I  
22 haven't seen that email, so who would be in charge of --

23 A. They might have Dropboxed it.

24 Q. So you might have set it up so he could go look  
25 at it?

1 A. Yeah, it's probably Dropbox.

2 Q. And there would an email telling him that?

3 A. Typically. Or a phone call. We don't do a lot  
4 of emails. That's our standard practice.

5 Q. Who would have been in charge of informing him  
6 of that?

7 A. That it was ready to go?

8 Q. Yeah.

9 A. Could have been Martha, could have been Tina.

10 Q. And you said the report is 95 percent, what, 95  
11 percent the same as the final report?

12 A. Well, I would have to sit here and do a  
13 line-by-line, but just in looking at it now, it looks  
14 like it's pretty --

15 Q. How many pages is that report?

16 A. 32, and the other one is 37.

17 Q. What are the changes, do you know?

18 A. Don't know without looking at it.

19 Q. If you don't know what the differences are, how  
20 is it that you know that the information Mr. Moe needed  
21 to do what he had to do didn't change from the final  
22 report?

23 A. Because the part that he needed to see was page  
24 31, which is the beginning of the specifications -- not  
25 specifications -- the recommendations for repair,



1 requirements and recommendations in Section 8, and by the  
2 time this report is put together, the data that is  
3 gathered for each building that talks about the damage,  
4 which is listed in Sections 2.1 all the way to 2.5, I  
5 think I talked about that already -- just a second.  
6 2.5.51, this is each one of the building damages, that  
7 hasn't changed. That's the same. That would have been  
8 incorporated very early on in the draft reports.

9 Q. Okay. So as far as --

10 A. I will go on record and also say that Mr. Moe  
11 called me once he got this and we did have a discussion  
12 about this. So it's not just the document itself, it's,  
13 he had questions about what, about scope, and those would  
14 be important for him to know if he's putting together his  
15 estimate.

16 Q. So there's nothing in the final report that he  
17 needed to see in order to do his estimate concerning the  
18 cost to make repairs, is that correct?

19 MS. PHILLIPS: Objection, form, foundation.

20 Q. BY MR. RUDA: I'll rephrase. As far as you're  
21 concerned, sir, there's nothing in the final report  
22 that's new or adds information other than what Mr. Moe  
23 needed to see in order to do his estimate concerning  
24 repair, replacement than what was already contained in  
25 the draft, is that correct?

1 MS. PHILLIPS: Objection to form.

2 A. No, I don't believe that there is. As I've  
3 already stated, I have not had a chance to lay the two  
4 documents side by side and see what the final changes are  
5 between the two. I will tell you that I did, in  
6 preparation I did review Mr. Moe's estimate that he put  
7 together, and I did find that there is a mistake in his  
8 estimate.

9 Q. BY MR. RUDA: In regard to the conversations  
10 that you had with Mr. Moe, did you have one or more than  
11 that conversation with him?

12 A. Just one.

13 Q. When was that conversation?

14 A. I don't recall. Before his estimate was  
15 produced and after this draft was sent out.

16 Q. Other than that, you can't be more particular?  
17 It's December, it's August? You can't say?

18 A. No, I don't know.

19 Q. And was that over the telephone?

20 A. Yes.

21 Q. Was anyone else on the call other than you and  
22 Mr. Moe?

23 A. No, just me.

24 Q. Who called who?

25 A. He called me.

1 Q. And why did he call you? What did he ask you?

2 A. Because he had gotten the draft and he had  
3 questions about it, the estimate he was putting together.

4 Q. What did he ask you?

5 A. He wanted to know about the firewalls, he wanted  
6 to know about that, I told him we were still vetting that  
7 issue out. He wanted to know about the, we talked about  
8 windows, detach/reset versus replace. We talked about  
9 the roof framing, were there roof framing issues that had  
10 to be dealt with in terms of the decking. General  
11 scoping questions more than anything that would be  
12 important for somebody putting an estimate together.

13 Q. So he had questions about the firewalls, the  
14 windows, the roof framing and what else? What other  
15 specific scope questions, if you recall?

16 A. I don't recall.

17 Q. How long was the conversation would you say?

18 A. Probably an hour.

19 Q. Do you have any notes of that conversation?

20 A. No.

21 Q. Did you bill for that conversation?

22 A. No.

23 Q. Why not?

24 A. I didn't. I probably considered it as part of  
25 our services. Part of our fixed fee. We try not to

1 nickel and dime our clients.

2 Q. All right. Let's go back to your report then.  
3 I see on the front cover that it's the, there's a stamp  
4 on it, "Licensed Professional Engineer," and "Brian Craig  
5 Johnson." Is that correct?

6 A. Correct.

7 Q. Mr. Johnson is employed by your company, I think  
8 you said, is that correct?

9 A. Yes.

10 Q. And the first page of the report contains  
11 information concerning storm damage investigation. Am I  
12 correct that this information came from one of your  
13 employees, Martha, or is it something that you did or  
14 from some other source?

15 A. No, she puts in the, Martha does the initial  
16 research for us on the storm, the date of loss. So if  
17 we're given a date of loss of April 5th, 2010, she will  
18 typically, our practice is to go to NOAA, to pull up  
19 information from the NOAA website and event details.  
20 NOAA does a pretty good job of listing things that have  
21 occurred in or around the general area. These are  
22 typically not site specific, they are generalized for the  
23 storm event that went through the area.

24 Q. Okay. And so that's in 1.1 of the report, is  
25 that correct?

1 A. Yes.

2 Q. And that relates solely to the storm event on  
3 April 5th, 2010, is that correct?

4 A. Yes, it does.

5 Q. Okay. Now in 1.1.1, there's a reference to  
6 Forensic Weather Consultants, LLC. Who is Forensic  
7 Weather Consultants, LLC?

8 A. It's one of the reports that we received from  
9 the Childress firm. Howard -- what's his last name. I  
10 can't remember.

11 Q. Altschule.

12 A. Altschule, yeah. This is Howard's report, and  
13 he's a meteorologist and he put a site-specific report  
14 together, which was part of the documents that we  
15 reviewed.

16 Q. All right. You didn't retain Forensic Weather  
17 Consultants, is that correct?

18 A. No, we did not.

19 Q. Okay. Did you rely on the report, let me ask --  
20 strike that. Did you rely upon their report?

21 A. In part, yes.

22 Q. How did you rely upon the report? I'm speaking  
23 to you personally. What did you rely upon it for?

24 A. For comparing the site conditions that I  
25 witnessed when I did my inspection and that I reviewed

1 from the photos that I reviewed that our data gatherers  
2 took, Jim and Josh Long, Jim Irmiter and Josh Long. So I  
3 compared what I saw on the site and what we saw on the  
4 site to what Howard had opined in his report in terms of  
5 the size of hail, in terms of the wind and the effects of  
6 those on the building.

7 Q. Do you know Howard Altschule?

8 A. I do not.

9 Q. Ever worked with him previously on any matter  
10 where he's been an expert the same case you've had?

11 A. I have one case I'm working on where he has been  
12 retained as an expert.

13 Q. In regard to American Building Contractors,  
14 Inc., have you worked on them in any cases where they've  
15 also been retained as an expert to act on the same side  
16 of a case?

17 A. I may have done an appraisal with Josh Moe five,  
18 six years ago, but that's the only time that I'm aware of  
19 that we've worked together.

20 Q. So your reliance on the report was that  
21 Mr. Altschule prepared his report, you reviewed his  
22 report obviously, and you said you used his report to the  
23 extent to which it related to what you visually saw and  
24 what your employees visually saw there, is that correct?

25 A. Yeah, we approach all of these inspections from

1 a backwards process. We want to eliminate causation and  
2 get to the most reasonable and logical conclusion, kind  
3 of an Occam's razor type of approach, and a report like  
4 this is part of that examination. That's why we, in  
5 Section 1.1, that's why, when we receive an assignment,  
6 the very first thing we do is we pull up NOAA reports to  
7 find out is there even a storm that somebody, some  
8 definitive source is telling us occurred at or around  
9 this location on this reported date of loss, because we  
10 get calls all the time to look at a storm event and we  
11 pull up the information and there's nothing six months on  
12 either side of this alleged event that occurred. This  
13 one, clearly there was stuff that was coming out from  
14 NOAA, and then it dovetailed with his report.

15 Q. Now turn to page 2 of 37. Section 1.1.2, I take  
16 it the numbering is off a little bit, that probably  
17 should be up a little bit?

18 A. It should be, yes.

19 Q. And that's consistent through the report, I  
20 think?

21 A. Yep.

22 Q. There's also notations of other national  
23 climatic data from July 1st, 2003 to July 1st, 2013, is  
24 that correct?

25 A. Yes.

1 Q. Okay. What other events are noted in your  
2 report?

3 A. Well, we're noting a -- other than these right  
4 here, these three?

5 Q. Well, I'm just asking, in your report, you can  
6 refer to it if you want, what other climatic events did  
7 you refer to in this report?

8 A. Well, we looked at a ten-year period.

9 Q. Why ten years?

10 A. Just that's what we do in our practice.

11 Q. So there's no reason other than it's ten years;  
12 it could be five years, it could be 20 years?

13 A. Well, 20 years, they don't go back that --

14 MS. PHILLIPS: Hold on. Objection to form.  
15 Go ahead.

16 A. Excuse me. They don't go back that far. 20  
17 years is, I mean ...

18 Q. BY MR. RUDA: So I'm asking. Is there any  
19 reason it's ten years and not five years, 15 years?

20 A. No, there's no reason. We typically pick six to  
21 ten years. We went back ten years, we looked at, we  
22 researched data and came up with these three storm events  
23 in '03, '04 and '06 that would have had hail at this  
24 location. And in all instances the hail was smaller than  
25 the hail that we saw, that Howard has in his report, and



1 it's smaller than the damage that we saw on the site.

2 Q. So what was the size of the hail that Howard  
3 reported?

4 A. He has a range, which would be consistent with  
5 all hail, he has it between 1.43 and 2.16 inches in  
6 diameter, with an average between those of being about  
7 1.57 inches.

8 Q. And in regard to the hail event that occurred on  
9 August 1st of 2003, what was the size of the hail?

10 A. .75 to 1.25.

11 Q. And for the event that occurred on May 9th,  
12 2004, what was the size of the hail?

13 A. One inch.

14 Q. And for the event that occurred on  
15 September 22nd, 2006, what was the size of the hail?

16 A. .75.

17 Q. I noted in what's reflected in the report that  
18 for May 9th, 2004 and September 22nd, 2006, there's just  
19 a single size of hail and not a range reflected. Why is  
20 that the case?

21 A. That's what the report indicated.

22 Q. Meaning the NOAA report?

23 A. Yes.

24 Q. Do you have the NOAA report in your file  
25 somewhere?

1 A. I do not.

2 Q. So you don't, you did not personally review the  
3 NOAA report?

4 A. I did. I went online as part of the, when  
5 Martha prints these up, part of Brian and my research as  
6 we go through these is to read each of those reports.

7 Q. Okay. Are you aware of a hail event that  
8 occurred on July 21st, 2013 at the Southgate Townhome  
9 Association?

10 A. No.

11 Q. Your research did not include that time frame,  
12 is that correct? You stopped as of July 1st?

13 A. Yeah, we typically go up to date of loss, we  
14 don't go after date of loss.

15 Q. Did you discuss a hail event that occurred on  
16 July 21st, 2013 with Mr. Joshua Moe by any chance?

17 A. No.

18 Q. Are you aware if a meteorologist was retained to  
19 do any assessment of the hail events reflected in your  
20 report on August 1st of 2003, May 9th of 2004 and  
21 September 22nd of 2006?

22 A. I do not recall if Howard has data in his report  
23 on other storm events.

24 Q. If I told you it does not, that may help you,  
25 but I'm asking if you're aware if any meteorologist was

1 retained to assess the climatic data concerning the  
2 events in '03, '04 and '06?

3 MS. PHILLIPS: Objection to the form of the  
4 question.

5 A. No, not aware of it.

6 Q. BY MR. RUDA: Okay. You did not consult a  
7 meteorologist in regard to those events?

8 A. No, we did not.

9 Q. Sir, would you take a look at the bottom of  
10 page 2? This report reflects that the April 5th, 2010  
11 event, and not the 2003, 2004 and 2006 storm events, were  
12 the, were more likely the cause of the damage; is that a  
13 good way to put it?

14 A. Yes.

15 Q. Sir, the sentence there, that last paragraph on  
16 the page says, "In our opinion, to a reasonable degree of  
17 engineering certainty, the damages observed at the  
18 complex were more likely than not to have occurred  
19 because of the April 5th, 2010 storm event and not the  
20 2003, 2004 and 2006 storm events," is that correct?

21 A. Correct.

22 Q. So this is not your opinion, is that correct?

23 A. It's not my opinion?

24 Q. Yes, sir. It' not your opinion --

25 A. Because it says "engineering certainty" and I'm

1 not an engineer? Is that why you're saying it's not my  
2 opinion?

3 Q. No, my question is: This not your opinion, is  
4 that correct, yes or no?

5 A. "In our opinion." This is a joint opinion  
6 formed by Mr. Johnson and I.

7 Q. You were retained as an expert, sir, and you're  
8 offering up your opinions in regard to this matter, is  
9 that correct?

10 A. I am, yes.

11 Q. And Mr. Johnson has been retained as an expert  
12 to offer up his opinions in this case, is that correct?

13 A. Yes.

14 Q. Okay. I'm just asking your opinions, I'm not  
15 asking his opinions. So in regard to that sentence, sir,  
16 is it your opinion "to a reasonable degree of engineering  
17 certainty, that the damages observed at the complex were  
18 more likely than not to have occurred because of the  
19 April 5th, 2010 storm event and not 2003, 2004 and 2006  
20 storm events," is that your opinion, sir?

21 A. It is my opinion, based on my education,  
22 training and experience, that the damages observed at the  
23 complex were more likely than not to have occurred  
24 because of the April 5th, 2010 storm event, and not in  
25 2003, 2004 and 2006.

1 Q. Okay.

2 A. And I base that on having inspected thousands of  
3 roofs and over three million square of shingles that have  
4 been damaged by hail impact.

5 Q. If that is the case, sir, why did you write in  
6 the report that you signed that your opinion is "to a  
7 reasonable degree of engineering certainty"?

8 A. That's not what I just said in my deposition.  
9 That's not how I answered.

10 Q. I know. That's why I asked the question.

11 A. I said my opinion is based on my education,  
12 training and background.

13 Q. My question is: Why did you write in the report  
14 that it's based upon --

15 A. I didn't write that in the report.

16 Q. I'm sorry, sir, can we turn again to page 37?

17 A. Yes, that is my signature on page 37.

18 Q. Is that your signature on page 37?

19 A. This is a joint report. It's co-authored by  
20 Mr. Johnson and myself. Mr. Johnson is a licensed  
21 engineer and holds out an engineering opinion, which he  
22 gets to do. I hold out an opinion based on my training,  
23 education and experience.

24 Q. So just so I'm clear, on page 37 it says,  
25 "Digitally signed," and it has your digital signature on

1 it and it's dated January 7th, 2014, is that correct?

2 MS. PHILLIPS: Objection, asked and  
3 answered. Go ahead.

4 A. Yeah, I have answered that. It's on the record.  
5 Absolutely, I signed that. You bet.

6 Q. BY MR. RUDA: And it's indicated it's signed as  
7 President of Forensic Building Science, Inc.,  
8 International Code Council, Residential Building  
9 Inspector and Property Maintenance Inspector, is that  
10 correct?

11 A. It is, yes.

12 Q. So you're signing the report and representing  
13 that it's based upon -- well, your title is President of  
14 FBS, and then your certifications as International Code  
15 Council, Residential Building Inspector and Property  
16 Maintenance Inspector, is that correct?

17 A. No, you're representing that. I'm representing  
18 those are some certificates that I hold.

19 Q. So I'll ask the question one more time, sir.  
20 Based on your answer, which is, you said it's your  
21 opinion based upon your experience basically, why did --

22 A. Training and education, not just my experience.

23 Q. Okay, your training as you've described it, your  
24 education as you've described it, and your work  
25 experience as you've described it, correct? That's what

1     you based it on?

2           A.     Right.

3           Q.     I'm just asking why did you author a report that  
4     says the cause was the April 5th, 2010 hail event based  
5     upon a reasonable degree of engineering certainty? Why  
6     did you sign a report that has those words in it is a way  
7     to put it?

8                   MS. PHILLIPS: Objection to the form of the  
9     question, asked and answered. Go ahead.

10          A.     I've already answered that question. It says,  
11     "in our opinion." It is a co-authored report.

12          Q.     BY MR. RUDA: Okay. Sir, would you agree that  
13     you then have no opinion based upon a reasonable degree  
14     of engineering certainty because you're not an engineer?

15          A.     I'm not an engineer. I would agree that I'm not  
16     an engineer.

17          Q.     Would you agree with me that you cannot offer up  
18     an opinion to a reasonable degree of engineering  
19     certainty because you do not hold a degree as an engineer  
20     and you are not licensed as an engineer in any state?

21          A.     I would agree.

22          Q.     Okay. So on page 2 of the report, where it  
23     states, "In our opinion, to a reasonable degree of  
24     engineering certainty," that is, I take it then, that  
25     must be Mr. Johnson's opinion, not yours, is that

1 correct?

2 A. As far as the engineering certainty part, yes,  
3 that would be his opinion.

4 Q. Okay. At the end of that page, in the last  
5 line, it says, "In particular, the impact damage on the  
6 shingles did not show weathering consistent with an event  
7 that occurred more than seven years before we inspected  
8 the roofs." Do you see that, sir?

9 A. Yes, I do.

10 Q. All right. Did you write that or did  
11 Mr. Johnson write that?

12 A. It's co-authored, as I indicated before.

13 Q. You both wrote that, is that correct?

14 A. Yes.

15 Q. Okay. Could you explain what significance that  
16 sentence has to the opinions that you hold?

17 A. The impact damage that I saw on the shingles  
18 was, the discoloring that I saw was consistent with  
19 granule loss and exposure to UV that would have occurred  
20 within a couple years after an event. Granule loss and  
21 exposure of the mat material that is five, six, seven  
22 years old shows a completely different type of, it  
23 presents itself differently, for lack of a better word.

24 When we start getting into seven-year-old stuff,  
25 we're going to see graying in color, we're going to see,



1 when closely examined, and when I say closely examine, we  
2 take our photographs, you'll see a number of photographs  
3 that we take very close up, where the camera is sitting  
4 on the edge of the roof to show the indentation. When  
5 those are blown up to 300 percent on a high-definition  
6 screen, you can see the cracking and the etching and the  
7 alligatoring that occurs to strikes that are old, that  
8 have been there a long time. This building just did not  
9 present any of that when we were doing our inspections.  
10 It all looked very fresh, if you will. Fresh within the  
11 last couple of years.

12 Q. All right, so --

13 A. It had some early stages of graying, which would  
14 not have been able to occur on a storm event that had  
15 happened in 2013. That's why we didn't pay any attention  
16 to the 2013 storm event, because the materials that we  
17 were seeing had begun to age and showed aging consistent  
18 with something older than two or three months.

19 Q. Okay. So you can determine from looking at a  
20 hail strike on shingles -- strike that. Are you talking  
21 about weathering shingles, is that correct?

22 A. Yes.

23 Q. So it doesn't have anything to do with siding or  
24 soft metals; strictly weathering on shingles, is that  
25 correct?

1 A. Correct.

2 Q. So would you agree with me that you cannot  
3 determine from looking at hail strikes on siding whether  
4 it happened, you know, a month or five years before?

5 A. Depends on the type of siding.

6 Q. Well, the vinyl siding on this complex.

7 A. That would be difficult to do.

8 Q. Okay. Is it the same for the soft metal  
9 strikes, too; that you can't date them based upon their  
10 visual appearance at any particular point in time?

11 A. Depends on the location of where you are. Down  
12 in Phoenix, Arizona where we get dust storms, it's much  
13 easier to do than it would be in Chicago.

14 Q. But up in Chicago, which is like here in  
15 Minneapolis for the most part, pretty similar, you can't  
16 really date by appearance hail strikes on soft metals  
17 then?

18 A. Correct.

19 Q. Okay. So going back to the shingle, is a good  
20 way to put it you determined, based upon the weathering  
21 on the shingles and the granular loss to the parts of the  
22 shingles, that you assessed or determined that it was the  
23 April 5th, 2010 hail event? Is that a good way to  
24 summarize what you said?

25 MS. PHILLIPS: Objection to form.

1 A. Well, that's one piece.

2 Q. BY MR. RUDA: What else?

3 A. That's one piece of it.

4 Q. Besides weathering, which I include to mean  
5 graying of it, that grays over time, and granule loss,  
6 what else?

7 A. The report from the meteorologist, photographs  
8 that I saw. I brought those today if you haven't seen  
9 them. I'm pretty sure you have. Photographs of hail,  
10 inch-and-a-half size hail being held in the hand of one  
11 of the residents from the April 5th storm event. Their  
12 hand is wet. The hail that they're showing, when you  
13 measure the hand and you measure that picture, it's an  
14 inch and a half this direction. Their hand is wet. It's  
15 gone down in size.

16 When that hail comes through the upper  
17 atmosphere, at least the studies that I've seen from  
18 Haag, the studies I've seen from Petraeus, those  
19 hailstones are sub, subzero temperature, and so they  
20 diminish in size as they're falling, and they diminish  
21 very, very rapidly once they're on the ground. So this  
22 guy is picking up, this hand is holding inch and a half  
23 hail, the hand is wet, that hail was larger than that  
24 when it fell at that point in time. It's pretty simple,  
25 in my mind at least, cause and effect.

1 Q. Okay. I was just asking about the opinion that  
2 you indicated is your opinion that the impact damage on  
3 the shingles did not show weathering consistent with an  
4 event that occurred more than seven years before we  
5 inspected the roofs. So again I want to go back to that.  
6 So other than weathering, is there any other reason why  
7 you hold the opinion that the only weather event that  
8 caused the damage to the shingles was the April 5th, 2010  
9 storm?

10 A. The tactile feel of the shingles, the  
11 impressions that I was seeing and feeling, and that my  
12 data gatherers, my technicians felt as well, would be  
13 consistent with larger hail than was reported in '03, '04  
14 and '06, and more consistent with the larger hail in '05.  
15 The process that we used to --

16 MS. PHILLIPS: I think you mean '10?

17 THE WITNESS: '10, excuse me. Yeah.

18 A. The process that we use to tactilely feel for  
19 the hail strike, once it's been circled and before it is  
20 X'd out as not being a hail strike, is to use your thumb  
21 to rub into that location and feel the indentation, and  
22 that was a pretty consistent theme that we saw on this  
23 building.

24 Q. BY MR. RUDA: Does your report reflect any  
25 tactile analysis of the hail strikes on the shingles?

1 A. I don't understand the question.

2 Q. Well, you just described that one of the things  
3 you did besides the weathering that was a visual  
4 inspection, as you described it, was the tactile feel of  
5 shingles. Does your report reflect any tactile feeling  
6 of shingles?

7 A. I don't know if the report actually goes through  
8 that step-by-step process. It might. I know that that  
9 is a fairly well-established industry practice, and it's  
10 taught actually in the Haag certification classes.

11 Q. Do you have Haag certification, sir?

12 A. No, I've been through their classes but I  
13 haven't certified. My other people, I've got three  
14 people on staff that are. Two of the people inspecting  
15 here were certified, for what it's worth.

16 Q. So you've indicated the weathering, as reflected  
17 in your report as you've described it, and the tactile  
18 feel of shingles, as well as photographs you saw of  
19 people holding hail in their hand after the event are the  
20 bases for your opinion that the April 5th, 2010 storm was  
21 the event that occurred, pardon me, that caused the  
22 damage to the shingles, is that correct?

23 A. Yes.

24 Q. Anything else?

25 A. Yeah, one last opinion of mine. The, I've been

1 blessed with being on appraisal panels all over the  
2 country with adjustors working for insurance companies,  
3 engineers who primarily are retained by insurance  
4 companies, from Haag, Rimkus, Project Time & Cost, from,  
5 I can't remember all the names, Donan, and I base my  
6 opinion on what I believe is hail damage not only on all  
7 of the things I've testified to thus far, but on  
8 universal agreement on appraisals between all three  
9 people on the appraisal panel, the umpire and the two  
10 appraisers, who are typically adverse to each other,  
11 agreeing that this is hail. When we see this every  
12 single time, we will agree as a panel that it's hail. So  
13 I know, for example, if I'm going to call this hail on  
14 this job, on this particular project, that I can go to 50  
15 or 60 other adjustors, engineers, attorneys, retired  
16 judges who sat on these panels and have agreed that it is  
17 hail. So I'm basing it on a very consistent theme that I  
18 see nation-wide as well.

19 Q. Is that it? Any other bases for the opinion as  
20 expressed here that "the impact damage on the shingles  
21 did not show weathering consistent with an event that  
22 occurred more than seven years before we inspected the  
23 roofs"?

24 A. No.

25 Q. Can you tell me, is there some authoritative

1 source that you rely upon for your explanation of  
2 weathering as you've described it? Is there some  
3 journal, some authoritative source, some source that you  
4 can go to to point that describes how you assess the  
5 weathering of hail damage so that you can date it in  
6 time?

7 A. Just a second. Well, see, you had to throw in  
8 the word "authoritative," so that's why I have a problem  
9 with that. I think Haag certainly has their opinions  
10 about it.

11 Q. Okay. In particular, where in Haag? You  
12 indicate at page 4 of 37 of your report that "The  
13 following documents were used for reference." I note  
14 that you indicate, "Haag Education Haag Certified Roof  
15 Inspector Program, Residential Edition" in particular.  
16 What in that?

17 A. There's hundreds of pictures in there that they  
18 show examples of things.

19 Q. Can you tell me, sir, specifically what section  
20 of Haag you relied upon to --

21 A. Not without having a book here in front of me.

22 Q. Would you take a look --

23 A. And --

24 Q. If you want, you can take a look at Exhibit 5  
25 and find that section in Haag that you're relying upon

1 and explain it to me.

2 A. It's not in Exhibit 5.

3 Q. These are all the documents that we received  
4 from the other side in the case that you relied upon,  
5 so --

6 A. But --

7 MS. PHILLIPS: Wait a minute. Let him  
8 finish.

9 Q. BY MR. RUDA: So you can look through, I think  
10 all those documents are at the end of 5.

11 A. We may need to take a break here. We may need  
12 to take a break here.

13 Q. That's fine. I was just saying --

14 A. You're misstating what I said, okay? That's why  
15 we need to take a break. You said authoritative source.  
16 I didn't say that Haag was authoritative. The fact that  
17 I list it here, you're putting words in my mouth. I'm  
18 not saying Haag is authoritative. I'm saying we put  
19 people through the training. That doesn't mean that we  
20 think it's authoritative.

21 Q. Okay.

22 A. All right?

23 Q. The reason I used the term is you indicated Haag  
24 was a source that you referred to, so --

25 A. A source, I didn't say authoritative.



1 Q. Did you rely upon Haag or not, yes or no?

2 A. No.

3 Q. Okay. So is there any authoritative source that  
4 you relied upon, sir, for the opinions that you've  
5 expressed here today concerning how you determine  
6 weathering so that you can place a date on when a hail  
7 damage event occurred to a property?

8 A. No, there is no authoritative source that I'm  
9 aware of that can do that.

10 MS. PHILLIPS: Let's take a break. We've  
11 been going at this for an hour and a half.

12 MR. RUDA: Sure.

13 (Break taken from 11:33 a.m. to 11:39 a.m.)

14 BY MR. RUDA:

15 Q. Sir, I want you to take a look at what's been  
16 marked, previously marked as Moe Exhibit No. 2, and it's  
17 Bates stamp page 36. For example, I just marked it with  
18 a little tab there.

19 A. Yep.

20 Q. Okay. Are you familiar with a company called  
21 EagleView?

22 A. Oh, yes.

23 Q. Would you take a look at that report? If you  
24 need to move the clip, you can, just to see the top of  
25 it, and I don't want to mislead you. Please take a look

1 at it. This is a report for one of the addresses at the  
2 Southgate townhome complex. At the top it reflects that?

3 A. Yep.

4 Q. And the EagleView report reflects that the last  
5 recorded hail event within one mile of that address was  
6 on July 21st of 2013. Do you see that on Bates stamp  
7 page 36 there? I'll reach over and (indicating).

8 A. Yeah.

9 Q. Okay. And you also see the next section that  
10 says, "Hail Count: 19," is that correct?

11 A. Hm-hmm.

12 Q. Okay. And then at the bottom of that page it  
13 reflects that the hail was at least three-quarters of an  
14 inch, if not larger, on that date, is that correct?

15 A. Within a mile, yes.

16 Q. Within a mile. And I just want to grab this so  
17 I can be precise. And then hail count is described in  
18 this report as the number of hail events in excess of  
19 three-quarters of an inch that have occurred in the last  
20 three years, is that correct? At the bottom of what's  
21 reflected in the last sentence below "Hail Count: 19"?

22 A. Yes, but you -- and we work with this service.  
23 We work with them all the time.

24 Q. I'm just asking you if that's what it says, so  
25 I --

1           A.     That's what it says, but you need to know how to  
2     interpret what it says to understand what it says. So  
3     you're saying what it says, but I don't think you're  
4     interpreting what it says correctly.

5           Q.     Am I correct that what EagleView's report  
6     reflects is that within three years prior to January --  
7     sorry -- July 21st, 2013 there had been 19 separate  
8     incidents of hail in excess of three-quarters of an inch  
9     that had fallen? Is that correct or not?

10          A.     That's what it states, yes.

11          Q.     Okay, thank you. Did you take that, did you  
12     ever see that report before today, sir?

13          A.     No.

14          Q.     Okay. I had asked you before, let me, you can  
15     hold on to it, that's fine, I just don't want to -- I'm  
16     worried about things getting mixed up.

17          A.     I know.

18          Q.     Because I do it myself.

19          A.     It's not my first rodeo, Counselor, I'll make  
20     sure I don't mix them up.

21          Q.     No, no, it's not you, it'll be me. If it's  
22     clipped, then it doesn't get mixed up. If you need to  
23     refer to it, you may. But I had asked you previously,  
24     you know, if you had talked to Mr. Moe about that hail  
25     event and that incident, you said no. So this again, now

1 that you saw the report, this isn't anything that you and  
2 Mr. Moe talked about, I take it?

3 A. No, no.

4 Q. Okay. Let me ask you, sir, based upon your  
5 experience as you've described, and your qualifications  
6 as you've described, could -- and this is could -- could  
7 the hail event on September 22nd of 2006 have caused  
8 damage to shingles at the Southgate townhome complex?

9 A. What date is that?

10 Q. The storm event on September 22nd of 2006. It's  
11 reported at page 2 of your report. In other words, I'm  
12 asking could hail of .75 have caused damage to shingles?

13 MS. PHILLIPS: Objection to the form of the  
14 question.

15 A. I don't think it could have in this particular  
16 situation on these roofs. These were fairly robust  
17 shingles.

18 Q. BY MR. RUDA: And the basis for your opinion  
19 that the hail of .75 on September 22nd of 2006 could not  
20 have damaged the shingles at Southgate is they were  
21 robust. Can you be more specific what you mean by that?

22 A. Well, our report indicates, for example, that  
23 the red shingles, which we deemed were a 30-year shingle  
24 based on our measurements of the shingles, the thickness  
25 of the shingles, they're a thicker shingle and a bit more

1 robust, they did show damage which we attributed to the  
2 April 5th, 2010 storm, but they showed less damage than  
3 the gray shingles, which were a 25-year shingle. I think  
4 both shingles were fairly robust and would be less  
5 susceptible to something .75 in size, and I base that on  
6 looking at hundreds of storm events with that size hail.

7 Q. Okay.

8 A. And smaller.

9 Q. Is robust a term of art in the roofing business,  
10 or do you just mean robust as we commonly understand the  
11 word?

12 A. Robust as we commonly understand the word.

13 Q. Okay.

14 A. Stronger, more resilient and would deflect  
15 without showing damage.

16 Q. Okay. Any other bases for your opinion that the  
17 event on September 22nd, 2006 could not have caused any  
18 hail damage to the shingles?

19 A. Yes, I didn't see aging of the mat that would be  
20 consistent with something that old.

21 Q. All right. So my question first was a  
22 theoretical one; if hail of .75, as depicted on the  
23 September 22nd, 2006 NOAA reference, was large enough to  
24 cause hail damage, and you said no, based upon, you know,  
25 the type of shingles. You also then added that based on

1 your visible inspection the hail damage you saw wasn't  
2 old enough, I take it, sir?

3 A. Correct.

4 Q. It wasn't weathered?

5 A. Correct.

6 Q. Any other bases?

7 A. No.

8 Q. What about, and this is a theoretical question  
9 based on your experience, sir. On May 9th, 2004 there  
10 was hail that was 1.0, you know, an inch in size. Would  
11 hail of one inch be sufficient to cause damage to the  
12 type of shingles present in Southgate?

13 MS. PHILLIPS: Objection to the form of the  
14 question.

15 A. It could on the gray shingles.

16 Q. BY MR. RUDA: And is the basis for your opinion  
17 that it could on the gray shingles, but not the red I  
18 take it, the 25-year versus 30-year, is that why?

19 A. Yes.

20 Q. 30 years are, what, more robust, to use your  
21 term?

22 A. Yes.

23 Q. Any other basis?

24 A. No, I would only say that it, that would be  
25 large enough to cause damage on the gray shingles. We

1 didn't see damage from that storm event on the gray  
2 shingles.

3 Q. And, again, that's because of your assessment  
4 that you described; the weathering of the hail damage to  
5 the shingles, is that correct?

6 A. Correct.

7 Q. Okay. In regard to the storm event that  
8 occurred on August 1st of 2003 with hail size of .75 to  
9 1.25 inches, would that, sir, strictly the size of that  
10 hail, be enough to cause damage to any of the shingles at  
11 the Southgate townhome complex?

12 A. Yes.

13 Q. And in your opinion, is it the same that  
14 anything more than 1.0 would be big enough to damage gray  
15 shingles?

16 A. Yes.

17 Q. How about red shingles?

18 A. Red shingles on that upper end would potentially  
19 have some damage, some blemishes, yes.

20 Q. And you're of the opinion, though, that in  
21 regard to the August 1st, 2003 storm, that you didn't see  
22 any evidence that that storm caused any of the hail  
23 damage that you saw; again, it's because of the lack of  
24 weathering, I take it?

25 A. Correct.

1 Q. Okay. Now in regard to the siding damage that  
2 was found at the Southgate complex, is it possible that  
3 any of these prior storms in '03, '04 and 2006 caused the  
4 hail damage that, you know, your company discovered, that  
5 you saw and the other individuals from your company saw  
6 when they did their inspections?

7 A. It's possible but not likely based on the  
8 information that was provided to us by members in the  
9 association.

10 Q. Okay.

11 A. And photos that we reviewed that were taken by  
12 association members the day of the April 5th, showing  
13 displaced siding and showing damage to siding from hail  
14 from that particular day.

15 Q. Okay.

16 A. There was no reported siding damage by the  
17 association prior to that.

18 Q. So let's go through that. So it's possible the  
19 prior storms could have caused siding damage but it's  
20 your opinion that it's not likely?

21 A. It's possible that it didn't. Not likely. It  
22 did not.

23 Q. All right. So your opinion is not that it's  
24 possible it could have caused the damage, your opinion is  
25 it did not?



1           A.     My opinion is those, some of those storms had  
2 hail that would have been large enough to cause damage to  
3 the vinyl siding. There was no reported vinyl siding  
4 damage by the association prior to the April 5th, 2010  
5 storm event, leaving that as the event that caused the  
6 damage. There was also photographs that were taken the  
7 day after that storm showing some of that damage.

8           Q.     Okay. So your opinion, I guess a good way to  
9 put it, there's a theoretical possibility, as far as  
10 you're concerned, that the prior hail events in '03, '04  
11 and '06 could have caused damage to the siding based upon  
12 the size of the reported hail, is that correct?

13          A.     Yes.

14          Q.     But it's your opinion that those events did not  
15 cause damage to the siding because it was reported to you  
16 that there was a storm on April 5th of 2010 that caused  
17 damage to siding, and you have seen some photographs  
18 taken either that day or the day after that showed some  
19 damage to siding, is that correct?

20          A.     Correct.

21          Q.     No other bases for your opinion?

22          A.     Well, the directionality. Our damage on the  
23 siding typically is west focused and west, southwest or  
24 northwest focused, and that is very consistent with the  
25 direction of the April 5th storm event. So that is

1 another correlation that we used to form that opinion.

2 Q. Okay. Do you know what the direction of the  
3 storm events were in '03, '04 and 2006?

4 A. Not without digging back into those NOAA reports  
5 at this point.

6 Q. Now, sir, when you and others were inspecting  
7 the Southgate property, you found evidence of repairs  
8 that had been made to shingles, did you not?

9 A. Yes, some of the roofs had been replaced  
10 already. 16 of them.

11 Q. Let me be more specific. When you did your  
12 inspection, you found, did you not, evidence of partial  
13 repairs done to roofs that had not been completely  
14 replaced, not the 16 roofs which had been replaced after  
15 this hail event? In other words, you found evidence of  
16 other repairs to other roofs in the complex, did you not,  
17 that had been made, partial repairs?

18 A. Sporadic, yeah. Yeah.

19 Q. Did you come to any conclusions concerning those  
20 sporadic repairs that had been made to roofs as to the  
21 cause of why they needed to be repaired?

22 A. Wind damage.

23 Q. Could it be wind damage from these prior events  
24 in '03, '04 and 2006?

25 MS. PHILLIPS: Objection to form.

1 A. We don't know.

2 Q. BY MR. RUDA: Okay.

3 A. We couldn't get information on the maintenance  
4 on that.

5 Q. BY MR. RUDA: So it would only be wind damage,  
6 not any prior hail damage in your opinion that caused the  
7 need for these repairs that you saw that had been done on  
8 the roofs other than the 16 that were completely  
9 replaced?

10 A. Typically. Yeah, I mean typically when we, when  
11 we see shingles like that that are installed sporadically  
12 here or there, it's because a shingle is missing. That's  
13 usually what triggers someone on a maintenance crew to  
14 install a single shingle here or there, because they see  
15 it from the ground that there's a missing shingle.  
16 Typical maintenance approach.

17 Q. Now in regard to inspections of the premises,  
18 when were you at the premises to do an inspection that  
19 you did, sir? You can certainly look at your report.

20 A. Yeah, it's in my report. (Examining document.)  
21 July 30th, 2013.

22 Q. How long were you at the structure?

23 A. I was there for three-quarters of a day.

24 Q. By three-quarters of a day, do you mean  
25 three-quarters of an eight-hour day?

1 A. Yeah. I think I was on four roofs.

2 Q. Okay. Do you know what roofs you went on?

3 A. It would have been the ones -- let's see.

4 Q. Well, let me ask. Were they the ones that are  
5 identified as full inspections being done or --

6 A. No, I did two full and two partial.

7 Q. So which roofs did you go on?

8 A. I can't, at this point I can't recall.

9 Q. Okay. Is there a protocol that you use when you  
10 look at a roof to determine if there's hail damage or  
11 wind damage?

12 A. Yes.

13 Q. Is there a different protocol for wind versus  
14 hail or is it the same thing?

15 A. It's different.

16 Q. What's the protocol for hail damage,  
17 determining, you know, if there's hail damage or not?

18 A. We do not use test squares.

19 Q. What's that, test squares?

20 A. Test square is something that was developed by  
21 Haag Engineering as a methodology for looking at a large  
22 complex like this and extrapolating the extent of damage.  
23 So a ten-by-ten area, which is one square of roofing, a  
24 hundred square feet.

25 Q. So ten feet by ten feet?

1           A.     Ten feet by ten feet, a hundred square feet,  
2     it's marked off, and then within that, the boundaries of  
3     that square, you look for damaged shingles and you mark  
4     the damaged shingles and then you assess a count to that.  
5     And that's just not a philosophy that we believe in or  
6     adapt based on having been on inspections with Haag and  
7     with other firms that use that approach.

8           Q.     Do you know in the roofing industry if the test  
9     square approach is commonly used or not?

10          A.     I think it's commonly misused.

11          Q.     Okay. Not my question. Your opinion is it's  
12     not a good approach, I understand that. In the roofing  
13     industry, is it a protocol that's commonly used as far as  
14     you know?

15          A.     For a quick and dirty extrapolation, yes.

16          Q.     And when you say commonly used -- strike that.  
17     I said commonly used, but you agreed that it's commonly  
18     used. Who uses the ten-by-ten approach? Roofing  
19     contractors, insurance companies, public adjusting firms,  
20     outside adjusting firms, who uses this practice?

21                   MS. PHILLIPS: Objection, form of the  
22     question.

23          A.     Everybody.

24          Q.     BY MR. RUDA: Okay, fine.

25          A.     We see lots of people using it.

1 Q. Okay.

2 A. I should say, excuse me, misusing it.

3 Q. When you say misuse, what do you mean?

4 A. Well, we actually have trailed along six other  
5 engineering firms and/or, and along with adjustors, and  
6 I'll give an example. We did 42 buildings in Phoenix and  
7 the engineers who did the inspections on those buildings  
8 did test squares on every building, and they typically  
9 had counts of zero to five hail hits. And in every  
10 single instance we took the same boundaries of the test  
11 square and moved it right, left, up or down, keeping at  
12 least one square foot of space within their test square,  
13 so we're taking a corner of it but we're doing our own  
14 test square, and we were getting hits of 15 to 20.  
15 That's the misuse piece.

16 If you actually go through the Haag  
17 certification and training, Haag tells you very  
18 specifically to find the area with the most damage on the  
19 roof and that's the area that you should use for your  
20 test square. And what has happened in the industry is  
21 the insurance companies have flipped that upside down and  
22 all the inspectors that are working for the insurance  
23 companies are now going on the roofs and they're finding  
24 the area of least damage that has the most cover from  
25 trees and other things and that's where they're doing

1 their test squares. So we have abandoned the test square  
2 practice and we count all the damage. Doesn't take that  
3 much longer to do.

4 Q. All right. So the misuse is that Haag's  
5 protocol that they've taught, right --

6 A. It's right in their literature.

7 Q. -- is that you find the area of most damage and  
8 you use it for a test square; that's not misuse, that's  
9 the correct use of the Haag protocol?

10 A. Yeah, it's their protocol.

11 Q. But would you agree that that's a correct way to  
12 do it or would you say that in your opinion that's an  
13 incorrect way to do it?

14 A. I think that still can skew.

15 Q. How can that skew something in your opinion?  
16 Because you explained that misuse is people aren't going  
17 to the most damage and doing the test square, they're  
18 going to the least damaged area, and the area that's  
19 provided the most cover by shrubbery or whatever,  
20 adjoining roof or whatever it may be, and then taking a  
21 square there. That's what you said is the misuse. So do  
22 you have an opinion concerning the use of the ten-by-ten  
23 square foot area where there are the most hits on a roof?

24 A. Sure. That can give you false information as  
25 well.

1 Q. How so?

2 A. Give you too many, too much damage.

3 Q. All right. So --

4 A. My training as a building code official, okay, I  
5 work with very exact information. The building code is  
6 prescriptive. It tells you specifically what size nail,  
7 where to place the nail, how far to drive the nail, what  
8 size screw, what size fastener. It's very, very precise.  
9 I'm very linear and precise that way. So I'm not going  
10 to guess about how much damage there might be by doing a  
11 mathematical formula of one area on a hundred-square  
12 roof. One percent of the roof is being marked. It  
13 doesn't take that long to walk the whole roof. Walk the  
14 whole roof and count it. That's what we do. It's much  
15 more accurate.

16 Q. All right. I got it. So the problem with using  
17 the Haag protocol, if it's done according to their  
18 dictates, is you can actually determine that there's more  
19 hail damage than there actually was to a roof?

20 A. Possibly, yeah.

21 Q. Okay. You're aware that MKA, the architectural  
22 firm that looked at the Southgate property, used a test  
23 square analysis?

24 A. Yeah, I believe they did four buildings and they  
25 extrapolated from there, based on the directionality,



1 that this is what one would expect to see on all of the  
2 roofs, yeah.

3 Q. So is it your opinion, sir, that based upon  
4 MKA's test square analysis, if they did it correctly, if  
5 they did it according to Haag dictates, that they would  
6 have come up with more damage to roofs than there  
7 actually is?

8 A. I don't have --

9 MS. PHILLIPS: Objection to the form.  
10 Foundation.

11 THE WITNESS: Sorry.

12 A. I don't have an opinion on how they did their  
13 test squares because I haven't asked them, I didn't  
14 witness their test squares, so I really can't give you an  
15 opinion on that.

16 Q. BY MR. RUDA: You have no opinions about what  
17 they did or didn't do, is that correct?

18 A. Other than what we've listed in our report, and  
19 I think we do comment on some of their stuff, but, no.  
20 Other than what's in the report I have no other comments.

21 Q. Okay. Other than what's in your report you have  
22 no comments?

23 A. No.

24 Q. All right. So other than FBS, your company, are  
25 you aware of any other companies that does a hail

1 assessment the way you do?

2 A. There's more of them that are starting.

3 Q. Can you identify any of them by name?

4 A. Let's just say a great deal of the public  
5 adjustors who are in the NAPIA groups have moved into  
6 that process of evaluating.

7 Q. All right. So public adjustors, some.

8 A. Some public adjustors. The appraisal panels  
9 that I'm involved in, we're starting to move to that  
10 issue, if there is an issue. A lot of times there isn't,  
11 but if we get into that issue then we spend the time and  
12 we count. That's what I'm aware of.

13 Q. Okay. So you're not aware of any roofing  
14 companies, contracting companies, general contracting  
15 companies, architectural firms, engineering firms, other  
16 than yours, that are moving to the system you use, is  
17 that correct?

18 A. That is correct. I'm not aware of it at this  
19 point.

20 Q. Can you identify any public adjustors  
21 specifically by name that are moving to the analysis that  
22 you do?

23 A. Jim Pierce does this, Paul Norcia does it, Tim  
24 Barthelemy does this. I'm trying to think who else.  
25 David Greeson, Peter Ridulfo, Clay Morrison, Steven

1 Hadhazi. Bunch of different names.

2 Q. Are these all public adjustors in Minnesota?

3 A. No, most of them are out of state.

4 Q. Are any of them in Illinois?

5 A. Don't know.

6 Q. So you're unaware of any of them in Illinois.

7 You just don't know?

8 A. Just don't know. I don't know where they carry  
9 their licenses.

10 Q. And I apologize, I missed the last name of Paul.  
11 It was after Jim Pierce.

12 A. Norcia, N-O-R-C-I-A.

13 Q. Mr. Pierce, have you worked with Mr. Pierce  
14 before in cases where you've represented, or provided  
15 opinions, pardon me, for plaintiffs or insurance  
16 claimants?

17 A. Yes, yes.

18 Q. How many times?

19 A. Probably 25 times of things I've been involved  
20 with him. Fire losses and tornadoes and all kinds of  
21 different stuff.

22 Q. And these public adjustors you've identified,  
23 have they retained your company to do the analysis that  
24 you do in claims that they have concerning hail damage?

25 A. No, no. Typically public adjustors don't retain

1 us, the client retains us. The homeowner basically,  
2 yeah.

3 Q. Have these public adjustors' clients, the  
4 insureds, retained you; that is, they've recommended, you  
5 know, Mr. Pierce or Mr. Barthelemy, et cetera, they  
6 recommend that you should be hired to do the analysis so  
7 they get a correct assessment of hail damage to a house?

8 A. Yeah, we're typically brought in when, after the  
9 insurance company has retained an expert to come out and  
10 typically their report will say that there is no damage  
11 ever, and then we're brought in to do an assessment to  
12 see in fact if there is.

13 Q. Okay. Now in regard to the protocol that you  
14 use, let's go back to it for a moment here because we got  
15 sidetracked on test squares.

16 A. Yep.

17 Q. So tell me what the protocol is. The first  
18 thing you told me is that you don't use test squares, so  
19 we got off on the tangent there, so what's the protocol  
20 that you do use?

21 A. We get up on the roof. We start at the ridge  
22 and we essentially walk the roof in three to four rows at  
23 a time, and we do this not from a completely standing  
24 position but bent over so you can actually see, and we go  
25 through and we mark what we believe is physical damage to

1 the shingle.

2 Q. When you say mark it, do you use chalk?

3 A. Chalk. So we are circling it for hail or for  
4 any impact mark that we see, or any perforation that we  
5 see. Sometimes we'll see a nail pop or something like  
6 that.

7 Q. Basically anything you find --

8 A. Anything we see that looks like it's damage,  
9 we're going through and we're marking the whole thing.  
10 Very quick, quick pass.

11 Q. Okay.

12 A. Then we go back and we get down on our hands and  
13 knees and we begin to feel tactilely each one of those  
14 marks. And we cross off and eliminate things that are  
15 mechanical in nature, damage that might be a blister,  
16 damage that may be related to manufacturing of the  
17 shingle. In order to do that, you really need to  
18 understand how shingles are made, you need to have been  
19 to the factory, in my opinion, and watch shingles being  
20 made, which I have. You need to have installed thousands  
21 of squares of shingles and pulled them off the bundles  
22 and see what the effect of taking them out of the package  
23 can do to a shingle before you install it, which I've  
24 done, and then you eliminate anything that you think is  
25 not hail. And as part of that process, that's when

1     you're wearing out your thumb and your finger. By the  
2     end of the day, you'll literally have no skin left on  
3     your fingers because you --

4           Q.     So are you quite literally taking your thumb and  
5     placing it into the hole and feeling them?

6           A.     Feeling it, and if you -- and what's interesting  
7     is that if you take a shingle that has no granule loss on  
8     it at all and it looks pristine and you put your thumb on  
9     that shingle and you move it back and forth, you can't  
10    displace those granules. You take an area where it looks  
11    like there's a blemish and you do that and they come off  
12    very, very easily, and that's right in the Haag manual as  
13    well in terms of that tactile piece, so we do use that.  
14    So then we, we mark those, and then we typically will  
15    take close-ups of those photos, of those shingles.

16          Q.     Let me ask you a question. So everything is  
17    marked to begin with, basically anything that's unusual,  
18    and then you go back and look particularly for what is a  
19    hail hit, is that correct?

20          A.     Typically, yeah.

21          Q.     So when you document, you know, by circling, you  
22    know, whatever is unusual, is that photographed?

23          A.     Yes.

24          Q.     Was that photographed in this case?

25          A.     A representative sample of those. It would be

1 impossible to take a photograph of every single hail hit,  
2 even in the full inspection that we do.

3 Q. So, for example, if you take one side of a roof  
4 and everything's marked on that particular roof, because  
5 that's what you said that you did, is there a photograph  
6 taken of that entire side of the roof that shows all the  
7 circles on the roof?

8 A. Typically there would be, yeah.

9 Q. Okay. Because I haven't seen any such  
10 photographs. I know the report has some representative  
11 photographs.

12 A. That photo right there that shows (indicating).

13 Q. Okay, all right. So in the report there's a  
14 collection of five or six photos. Those are the photos  
15 you're speaking of, sir, that were done in this  
16 particular matter, is that correct?

17 A. Without looking through all of our photos, I  
18 would have to take ...

19 Q. I'm asking what the protocol is. This is a  
20 protocol question.

21 A. Yes.

22 Q. So the question is protocol is that, so every  
23 roof that was examined and marked with all of the  
24 particular defects, not hail defects, all of them, is it  
25 photographed to show all of them?

1           A.     No.    God, no, no.   We don't take photos of nails  
2           and we don't take photos of blisters and all that kind of  
3           stuff.

4           Q.     That's what I wanted to know.

5           A.     No, no, no.

6           Q.     Okay.

7           A.     We'd have 10,000 photos.

8           Q.     You may have misunderstood my question.

9           A.     Okay, okay.

10          Q.     In your initial assessment somebody marks  
11          everything.   You don't photodocument the everything?

12          A.     No, God no.

13          Q.     It's only after you go back and check everything  
14          for what is a hail mark and once you determine it is,  
15          then you photograph it?

16          A.     Correct.

17          Q.     Okay.

18          A.     Yeah, yeah, yeah, that's what we're doing.   And  
19          then we take a representative sample of some close-ups of  
20          that, maybe five or ten, that show, so that later when  
21          I'm showing, in a trial situation if I am showing, for  
22          example on our report, the photo on page 11 that shows  
23          the southwest elevation of Building 42 and it shows one,  
24          two, three, four, five, six, seven, eight, it says  
25          20-plus hits in this location.



1 Q. Hm-hmm.

2 A. I can look right at that and I can tell you  
3 right now, now there's no test square here, okay, but I  
4 can tell you that each one of those shingle tabs is one  
5 foot, and I can tell you, running across the page and  
6 running down the page, the exposure is five inches. So I  
7 could blow that up on a screen for a jury and I could  
8 tell you right now that, guess what, that area is  
9 ten-by-ten. There's 20 hits right there in a ten-by-ten  
10 area. So if somebody wanted to, I could put a test  
11 square on that very easily just by counting the number of  
12 shingles.

13 Q. All right. So going back to the protocol then.

14 A. Yeah.

15 Q. So after the tactile test, as you've described  
16 it, is done, and then I take it you must remove  
17 everything that's been circled, erase on the roof  
18 anything that's been circled that's not a hail hit?

19 A. Yeah.

20 Q. Is that the way it's done?

21 A. Yeah.

22 Q. How do you remove it off the roofs?

23 A. A rag.

24 Q. Just comes right off?

25 A. Yeah, just rag it off.

1 Q. And then it's photodocumented?

2 A. (Nods head.)

3 Q. What's the next thing that's done in the  
4 protocol?

5 A. That's basically it. I mean we count the  
6 number, that's put into a logbook, and then that's later  
7 transposed into this report in terms of the actual counts  
8 that we saw. That would be for a full inspection.

9 Q. Okay.

10 A. Then we have a protocol for what we call a  
11 limited inspection.

12 Q. I'm not done with the full inspection yet.

13 A. Okay.

14 Q. So in this particular matter with regard to  
15 Southgate, full inspections were done of how many  
16 different roofs?

17 A. Seven, I think five or seven, somewhere in that  
18 range.

19 Q. If you want to look at your report you certainly  
20 can do so.

21 MS. PHILLIPS: 6 of 37.

22 A. Six of 37.

23 MS. PHILLIPS: No, no, no, page 6 of 37.

24 A. Five. Yep. Five of the 56, yeah. In fact, we  
25 explain on page 7 of our report, I think we explain

1 pretty well the process that I just explained to you.

2 Q. BY MR. RUDA: So five roofs were completely  
3 inspected. How many roofs in the complex, do you  
4 remember?

5 A. No, that's not true. Every roof was completely  
6 inspected.

7 Q. Pardon me, I misspoke. So five roofs there were  
8 full inspections done, is that correct?

9 A. Five roofs -- there were full inspections done  
10 on every single roof. Five roofs, full tabulation, and  
11 getting down on your hands and knees and the full marking  
12 system was used on five roofs.

13 Q. So I'm clear, when you say five markings were  
14 done, full markings done, so on five roofs they were  
15 completely inspected and every side of the roof was  
16 marked, is that correct?

17 A. Yes.

18 Q. All right. On the other roofs in the complex,  
19 were they fully marked; yes or no?

20 A. No.

21 Q. Were they marked at all?

22 A. Yes.

23 Q. Does your report contain pictures of any of  
24 those other roofs --

25 A. Yes.

1 Q. -- that were partially marked?

2 A. Yes.

3 Q. Would you tell me where?

4 A. Oh, does my report? No, I don't think -- no,  
5 the report doesn't. The overall photographs do.

6 Q. Okay. So let's go back to the protocol then.  
7 So after a roof is fully inspected and fully marked and  
8 fully documented, the full inspection and documentation  
9 is done for that particular structure, is that correct?

10 A. On the roof part, yeah.

11 Q. On the roof part. Yeah, we're just talking  
12 about shingles now. What about limited or partial  
13 inspections, what do you call that?

14 A. Limited inspection.

15 Q. What about limited inspections, what's the  
16 protocol for that?

17 A. Limited inspection, we basically start, just  
18 like we do on the other inspection, we start up on the  
19 ridge and we work in basically four-foot segments, so you  
20 walk, you know, four rows down or, I'm sorry, eight rows  
21 down, and you walk the entire ridge. You count visually  
22 shingles that look and appear like the ones that we have  
23 already marked on other roofs that we determined are  
24 consistent with hail damage. Some of those we circle and  
25 take some pictures of. Usually we want to take about

1 five or six or ten pictures of that roof to show those  
2 pictures.

3 Q. So when you're doing the limited inspection,  
4 you're walking the roof the same as you do with a full  
5 inspection? Is it the same thing or not?

6 A. Doing the overall walk --

7 Q. Is the same?

8 A. -- is the same. You're not getting down on your  
9 hands and knees on every single hit. You're literally  
10 reaching down and checking randomly in ten locations.

11 Q. So every roof is checked in ten locations?

12 A. Yeah.

13 Q. Okay. If there's ten?

14 A. If there's ten, right, if there's ten marks.

15 Q. So if somebody might think they saw 50 marks,  
16 they would only check ten?

17 A. Right. But they would note that there's 50.  
18 This is an example. I've taken a picture on Building 42  
19 where I did a limited inspection. I walked it, I counted  
20 42 total hits on the roof and here's five pictures of  
21 what those 42 looked like, and that's it. That's how we  
22 do it.

23 Q. Okay. So when they're doing the limited  
24 inspection then, so they, do they circle the limited  
25 number of hits that they're just going to look at and

1 then photograph it?

2 A. Not all of them.

3 Q. Some of them?

4 A. Yeah, some of them.

5 Q. Okay. So on every roof that had ten or more  
6 hits, would they all be circled for limited inspections  
7 and photodocumented or not?

8 A. Not necessarily, no.

9 Q. Okay. Is there somewhere in notes or the report  
10 indicating a specific number of hits on each of the roofs  
11 then?

12 A. It's in the report.

13 Q. Okay. And again I had asked you which roofs you  
14 were on, both full and limited; you said you don't  
15 recall?

16 A. I don't recall, but my photos are, have a "TJI"  
17 after them, so it would be the photos that I took in the  
18 overall photo logs.

19 Q. And the photos in the report that are indicated  
20 by TJI --

21 A. No, they're not.

22 Q. -- are they indicated by date?

23 A. No.

24 Q. Okay. If the photos in the report are dated a  
25 day other than the day you were there, does that mean you

1 didn't take them?

2 A. That would be, that would be true, yes.

3 Q. All right. All the photos in the report are  
4 dated, you were there -- strike that. What date were you  
5 there, again, sir? I apologize, I know you told me  
6 before, but you probably remember better than I do.  
7 July 30th?

8 A. July 30th.

9 Q. All the photos in the report are dated other  
10 than July 30th, so that would mean none of these photos  
11 are yours, right?

12 A. That would be correct.

13 Q. All right. Can you tell me -- let's do this.  
14 On page 8 of 37, the photograph of, we'll just call it  
15 Building 7.

16 A. Yeah.

17 Q. And by the way, when it's Building 1, 2, 3, 4,  
18 et cetera, that's based upon the photograph, I take it,  
19 that's attached, the Google shot on page 3?

20 A. Yes, we labeled them.

21 Q. All right. So apples to apples, right, so we  
22 know what we're talking about?

23 A. Correct.

24 Q. Got it. So Building No. 7, do you know who took  
25 that photograph?

1           A.     I can't tell you that today, but we could  
2     certainly tell you that and would be prepared.

3           Q.     How so?

4           A.     When our photos are downloaded onto our server,  
5     the -- in fact, that's what we sent you in our, in our  
6     documents.

7           Q.     We don't have those yet, sir. We don't have the  
8     photos.

9           A.     You don't have any of our photos?

10          Q.     Not those.

11          A.     Sure you do.

12          Q.     Are these your photos?

13          A.     Yeah.

14          Q.     Okay. Then we've got them all. All right, then  
15     we'll get to those. Because I'm not sure that these are  
16     your photos.

17                 MR. RUDA: There were photos that were  
18     being produced from Irmiter's report that you and Matt  
19     corresponded with that you didn't have on Friday, so I  
20     don't have those photos.

21                 MS. PHILLIPS: I had zero correspondence  
22     with Matt on Friday.

23                 MR. RUDA: Emails or telephone calls then.

24                 MS. PHILLIPS: I likewise had none of  
25     those. There's another Christine in my office.



1 MR. RUDA: Oh.

2 MS. PHILLIPS: So maybe she was speaking  
3 with him.

4 MR. RUDA: He said Christine, so I don't  
5 know what ...

6 Q. BY MR. RUDA: Then we'll mark them and look at  
7 them, sir, because I had them identified as photos  
8 from --

9 A. No, those are all our photos. I'm sure those  
10 are all of our photos.

11 Q. They may not be, but we'll get to that in a  
12 second.

13 A. Yeah. So the, back to your question on the  
14 photos. If Josh Long takes a photo of Building No. 7,  
15 all right, it's going to give the address, it's going to  
16 say Building No. 7, it's going to say JOL and the date,  
17 Josh Long, so we know that he took the photos on that  
18 date of this building. And on our server it's all set up  
19 on building. So if you open up a building, you're going  
20 to see all the photo logs in there, and I believe that's  
21 what you would see in FBS reports that we dropped.

22 Q. Okay.

23 A. So all of those photos have been labeled and put  
24 into Word documents. What you may not have gotten in  
25 Dropbox, and I know we put it there but you may not have

1 printed it up, is we also would have dropped off all the  
2 raw photos. So we take a photo and we drop it into a  
3 Word document, and that's where we might label it or tell  
4 you what it is.

5 Q. Sure.

6 A. We also have all the raw photos that we send  
7 you, and that's a huge file, but you should have gotten  
8 that as well.

9 Q. Well, keep in mind that we're getting things  
10 through counsel for the parties.

11 A. Got it.

12 Q. So you're giving it to the lawyers, I take it,  
13 right?

14 A. Got it, yep.

15 Q. You know what you gave the lawyers and we have  
16 what we have.

17 A. Yep.

18 Q. All right. So you can tell, by looking at the  
19 raw photos in the photo log, who took the photos?

20 A. Absolutely.

21 Q. By initials, just like --

22 A. Yes, by initials.

23 Q. Okay.

24 A. Yep, yep.

25 Q. Let's go back to your report, sir, on page 3 of

1 37.

2 A. Yes.

3 Q. In Section 1.2, you indicate the documents that  
4 you've reviewed before you came to, you know, have the  
5 opinions that you've indicated.

6 A. Yes.

7 Q. Is that correct?

8 A. Yes.

9 Q. Is that an exhaustive list, I take it, at this  
10 point? In other words, is there anything not identified  
11 that you've reviewed --

12 A. Yes.

13 Q. -- that was omitted or missed?

14 A. No. There's, the only thing that I would add,  
15 and I mentioned this earlier, that I did review Mr. Moe's  
16 final estimate, which was not done at the time of this  
17 issuing of this report.

18 Q. That doesn't change any of your opinions, I take  
19 it, correct?

20 A. Well, if I'm asked to give an opinion on the  
21 cost --

22 Q. That's not what I asked you.

23 A. -- that would change my opinion.

24 Q. I asked if it changes any of the opinions you  
25 have in your report?

1 A. No.

2 Q. Okay. And you have not been disclosed nor have  
3 you been asked to provide an opinion as to cost, is that  
4 correct?

5 A. Not that I am aware of. I don't know. I have  
6 not seen the disclosure on what I'm being asked.

7 Q. Take a look at Exhibit 1.

8 A. All right.

9 Q. Turn to page 3.

10 A. Hm-hmm.

11 Q. Take a look at Section (b).

12 A. Yep.

13 Q. And tell me if you've been, as you understand  
14 it, your report doesn't indicate a cost, does it, sir?  
15 And by cost, I mean cost to do repair work, right?  
16 Slightly different question. I asked you your report  
17 doesn't indicate a cost to do the repair work, is that  
18 correct?

19 A. Our report does not.

20 Q. So does the disclosure indicate that you'll  
21 offer up opinions concerning cost?

22 A. No, I don't see it in there.

23 Q. Okay. All right. So we're not going to worry  
24 about that then. So going back to 3 of 37 and then to 4  
25 of 37, everything that you've looked at to offer up

1 opinions in this matter, you looked at -- I just want to  
2 go through this real quickly. You looked at photos from  
3 Madsen, Kneppers & Associates, MKA. Did you rely upon  
4 those photos in any way or just looked at them?

5 A. Just looked at them, yeah.

6 Q. Okay. So you did not, none of your opinions are  
7 based on what their photos show?

8 A. No.

9 Q. Okay. Would you agree their photos were taken  
10 prior to the date that you took your photos, you and your  
11 people took photos?

12 A. Yes.

13 Q. And then you also looked at American Building  
14 Contractors' estimate dated August 6th of 2010, 16  
15 photographs. Did you rely upon their estimate or the  
16 photos for any of your opinions?

17 A. No.

18 Q. You looked at 57 photographs from Cook, not  
19 dated. Did you rely on any of those photographs for your  
20 opinions?

21 A. No.

22 Q. It's also indicated that you looked at Madsen,  
23 Kneppers & Associates' estimate --

24 A. Well, let me back up. 57 photos from Cook. Are  
25 those, is Cook one of the residents?

1 Q. I don't know.

2 A. Okay. If it's one of the residents, I would  
3 have to see those 57 photos. But, yes, we would have  
4 relied on those if they are from the residents.

5 Q. I think we better mark this. Are those the  
6 photos you're speaking about, sir? We'll mark them in a  
7 second if they are.

8 A. (Examining document.) See, I don't know when  
9 they're dated. Yeah, they're not dated. No, we didn't  
10 rely on these because they're not dated.

11 MR. RUDA: Let's mark them as an exhibit  
12 then.

13 (Irmiter Exhibit 7 marked.)

14 Q. BY MR. RUDA: All right, sir. Exhibit No. 7,  
15 these are photographs that you just reviewed and  
16 indicated you did not rely on those for your opinions, is  
17 that correct?

18 A. We did not.

19 Q. Next item is MKA's estimate dated April 2nd and  
20 six photographs. Did you rely on the estimate or any of  
21 the photos for any of your opinions?

22 A. No.

23 Q. Next item, again MKA's revised estimate dated  
24 August 25th, 2011; did you rely on anything in that for  
25 your opinions?

1 A. No.

2 Q. Next page, it says, "Photos from Bruno, 6  
3 photos, dated February 18, 2013." Did you rely upon  
4 those photographs?

5 A. I would have to see them.

6 (Irmiter Exhibit 8 marked.)

7 Q. Exhibit No. 8, I believe, are the six photos  
8 from Bruno that are referenced in the report but I'm  
9 asking if you relied upon them?

10 A. (Examining document.) No, because they weren't  
11 dated.

12 Q. There's a letter from Childress Duffy dated  
13 July 24th, 2013. Did you rely upon that letter for any  
14 of your opinions?

15 A. Probably not, but I would like to see it before  
16 I ...

17 (Irmiter Exhibit 9 marked.)

18 Q. Take a look at Exhibit No. 9. It's a letter  
19 dated July 24th, 2013 from Childress Duffy, and I believe  
20 that's the letter referenced in your report. Did you  
21 rely upon that letter for any of the opinions that you've  
22 provided?

23 A. (Examining document.) No.

24 Q. Okay. Thanks. The next item here is "Pictures  
25 of hail damage, dated April 5, 2010." Did you rely upon

1 those?

2 A. I'll need to see them. Sorry.

3 (Irmiter Exhibit 10 marked.)

4 Q. Look at Exhibit No. 10. I believe, sir, those  
5 are the photographs that are referenced in your report?

6 A. Yes.

7 Q. Are those the photographs?

8 A. Yes, and we did rely on those.

9 Q. How so? What did you rely upon?

10 A. They're dated April 5th, 2010, and that was  
11 based on the JPEGs, pulling them up and looking at the  
12 JPEGs and the dates on them.

13 Q. Who took the photos, do you know?

14 A. I don't know who took them. They are of the  
15 complex, that's not in question, and it shows, showed us  
16 both wind damage and impact damage on the siding.

17 Q. Does it show any damage to shingles?

18 A. No, does not.

19 Q. Okay. And are you relying upon these photos for  
20 your opinion that the April 5th, 2010 event caused siding  
21 damage?

22 A. Yes.

23 Q. And is that based upon the photos dated, as you  
24 believe they're dated, April 5th, 2010, that show damage  
25 to siding and looks like some soft metals, gutters?



1 A. Yes.

2 Q. Okay. And so I take it strictly, these are  
3 photos that are dated April 5th that shows damage, so you  
4 say they indicate the damage caused by the storm?

5 A. Well, we don't just say that.

6 Q. For all the other reasons you've expressed?

7 A. For all the other reasons I've expressed, yeah.

8 Q. All right. The next item is Siebert  
9 Engineering, Inc. report dated October 17th, 2010 and 11  
10 photos. Did you rely upon that, sir, for any of your  
11 opinions?

12 A. Only, only what may have been noted in our  
13 report. I know we did discuss some rebuttal on some  
14 reports and things, and I can't remember if this is one  
15 of them. So if it's in our report, then we would rely on  
16 them.

17 Q. Do you want to take a look at your report and  
18 tell me if you relied upon Siebert Engineering for any of  
19 your opinions, and specifically if you did so?

20 A. (Examining document.) Does not appear we did.

21 Q. So you did not rely upon them, their report?

22 A. No.

23 Q. Okay. Sir, I would like you to take a look at  
24 that Siebert Engineering report for a moment.

25 MR. RUDA: Let's mark it as an exhibit.

1 (Irmiter Exhibits 11 and 12 marked.)

2 Q. BY MR. RUDA: Would you turn to the end of the  
3 report, sir? There's photographs. Just look at the  
4 first photograph you find.

5 A. Yeah.

6 Q. Can you tell me, can you use that photograph to  
7 describe to me the weathering of shingles? Can you  
8 determine that from the first photograph there?

9 A. No.

10 Q. Can you determine that from any of the  
11 photographs?

12 A. Not from these photographs. I would need the  
13 JPEGs.

14 Q. Meaning what?

15 A. I would need the raw photo so that I could blow  
16 it up on a screen to 300 percent and take a look at it.  
17 Photo 3 is a possibility. Photo 6 is a possibility.  
18 Photo 5 is a possibility. That's it.

19 Q. Okay. Thanks. All right. The next item  
20 indicated that you reviewed is the Streamwood Code  
21 Handout dated 2010. Did you rely upon that for any of  
22 your opinions?

23 A. Yes.

24 Q. Did you rely upon that for your opinions, sir?  
25 I'm asking specifically your opinions, not Mr. Johnson's.

1 A. Yes.

2 Q. Okay. So how did you rely upon that for your  
3 opinions? What's important in that?

4 A. Well, it says in our report, pages 26 through,  
5 pages 26 through 30, which would end at Section, start at  
6 Section 5.0 and would end at Section 5.2.3, and it  
7 relates to requirements that the City of Streamwood has  
8 and will put in place when these buildings are, undergo  
9 their repairs.

10 Q. Okay. So you relied upon the code in Streamwood  
11 for some of your opinions, correct?

12 A. Yes.

13 Q. So tell me specifically which of your opinions  
14 are based upon the code that you refer to in this report?

15 A. The roof sheathing, based on limited attic  
16 inspections that we did, and based more on walking the  
17 roofs, which are very soft and spongy, we found that H  
18 clips were missing between the deck sheathing joints.  
19 These are trusses that are 24 inch on center. And in  
20 order to support that span, either blocking has to be put  
21 in at each one of these seams or a thing called an H  
22 clip, and those were deficient, and so we are  
23 anticipating that that's going to require some additional  
24 work on the roofs that may have to be done to the roof  
25 decks, and we cite the code provisions in that, on page

1 26 of our document.

2 The attic ventilation we think is a little light  
3 under new provisions in the energy code, so additional  
4 roof vents will need to be added. Again that's minor, a  
5 minor issue, but that's going to have to happen.

6 Q. Is there anything else that --

7 A. I'm looking, excuse me.

8 Q. Take your time.

9 A. Yeah, they have an interesting provision in  
10 their code about siding matching and requirements within  
11 that, and being within a, that you need to submit the  
12 siding to ITEL for an examination in terms of color  
13 matches within a 1 to 2 percent value. I actually pulled  
14 an ITEL chart when I was on the site during my  
15 inspection. I have that here with me today and I can  
16 show you how that works. And there's nothing on the ITEL  
17 chart that we use as a field guide that would even make  
18 it worth sending these to ITEL in my opinion so we didn't  
19 bother. So we believe that the, there is siding that is  
20 physically damaged from the storm event that has to be  
21 removed. We believe that the City of Streamwood  
22 requirements, in our discussions with the building  
23 inspector, that they're going to end up requiring all the  
24 siding to be removed when this project starts.

25 Q. Okay. Just so we're clear, the code, you're

1 referring to the code section relating to siding and it  
2 has to be submitted to ITEL if, what, if you're going to  
3 do replacement of part of the siding it has to go to  
4 ITEL?

5 A. Yeah, if you're going to patch in or do partial  
6 siding.

7 Q. Okay. And you haven't, I take it your company  
8 has not submitted any of the siding to ITEL, is that  
9 correct?

10 A. ITEL has a field app that you can use, I have it  
11 here on my phone, it's pretty cool, and you basically can  
12 take a picture of the siding and you can compare it to --

13 THE WITNESS: Can you grab that book for  
14 me?

15 A. This is the ITEL field thing that you use. And  
16 basically what you do, it's our matching kit, and you  
17 take a measurement of the siding, you take their color  
18 guide and you put it up to the siding, you take pictures  
19 of the siding, and you basically say I think the closest  
20 that I have is the 052 or an 023 or 021. When that was  
21 done by me on the site during my site inspection, there  
22 was nothing on these that came even close.

23 Q. Okay.

24 A. So I didn't even bother submitting it. We also  
25 looked, as we indicated in our report, on every building

1 we pulled siding back to look for manufacturing markings  
2 and couldn't find any, which also makes it, I haven't  
3 seen ITEL yet match a siding that doesn't have a  
4 manufacturer's mark. If it doesn't have one, they can't  
5 match it. So we eliminated ITEL as being even an option  
6 at this point.

7 Q. So you decided there was no reason to submit the  
8 siding to ITEL to see if it could be matched?

9 A. Correct, based on similar, using these tools and  
10 doing similar things with ITEL. I'm trying to think if  
11 there's anything else.

12 Q. Let me finish up on ITEL.

13 A. Sure.

14 Q. So submission to ITEL is only required if you  
15 would determine that replacement of damaged siding was  
16 appropriate as opposed to re-siding the entire structure,  
17 is that correct?

18 A. Or piecing it. So in other words, if I have a  
19 damaged, if I have two pieces of siding with hail impact  
20 on a northwest elevation, which isn't true west, and I've  
21 got 30 on a west elevation, the question is what do you  
22 do on that northwest side. Well, it's my opinion, in  
23 talking with both the city, looking at their statute and  
24 their requirements, that as soon as we start removing  
25 siding on these buildings, all of the siding is coming

1 off because we're not going to be able to find a match.

2 Q. Okay. We'll get to matching in a second.

3 A. Yep.

4 Q. All right. So you explained the ITEL. Anything  
5 else in here that you relied upon for any of your  
6 opinions? Your reference is to the Streamwood Code  
7 Handout.

8 A. Yeah, Streamwood actually specifies Tyvek in  
9 there, which is very unique, because that's a, usually  
10 they talk, most jurisdictions talk about a house wrap or  
11 a weather-resistant barrier, but they actually specify  
12 Tyvek. And so I read that, as a trained building code  
13 official, to mean that then it has to be installed per  
14 Tyvek's current published installation instructions,  
15 which then would require some additional work to be done  
16 at the windows, meaning detaching and resetting windows  
17 for installation of flashing details that currently don't  
18 exist. So by specifying that the way they did, they  
19 really stepped into a problematic box from my standpoint.

20 Q. So one way to deal with that, if there was  
21 replacement to be made, would be to ask for a variance to  
22 replace siding without having to replace all the Tyvek?  
23 That would be one option, right?

24 A. Well, I think --

25 MS. PHILLIPS: Objection to the form of the

1 question, calls for speculation.

2 A. Yeah, I think all the Tyvek has to come off  
3 regardless. There's going to be nails in it and things.  
4 It's the question of how do you put the new Tyvek on, and  
5 the requirements for the new Tyvek call for it to be  
6 wrapped into the openings. So how do you physically wrap  
7 it into the openings without detaching and resetting.

8 Q. BY MR. RUDA: But you would agree with me that  
9 one way to deal with that would be to seek some sort of  
10 variance from the village, would it not? That could be  
11 an option to be pursued by a homeowner or, in this case,  
12 the townhome complex?

13 MS. PHILLIPS: Objection to the form of the  
14 question, foundation.

15 A. I will answer it this way. Within the building  
16 code there is the alternative design approach under  
17 Section 104, and it allows you to essentially do anything  
18 you want provided that you have a licensed design  
19 professional practicing in the state sign off on it and  
20 provide shop drawings, providing that you have a  
21 third-party independent testing agency that has tested  
22 the assembly and it is approved, or signed off on by that  
23 engineer, and then the city has to then approve that, so  
24 it's a three-step process. And, quite frankly, in  
25 talking with this building department, they're pretty



1 anal. They're going to make you go through that process.  
2 And I don't know that you're going to find the engineer  
3 that's willing to do that because the assembly is not  
4 tested that way. That's the problem.

5 Q. BY MR. RUDA: Moving on. You indicated that you  
6 also reviewed John Peterson's deposition transcript. Did  
7 you rely upon his deposition transcript for any of your  
8 opinions?

9 A. Yes. And we talked about that in our report.

10 Q. Which opinions, sir? And this is your opinions,  
11 not Mr. Johnson's.

12 A. Right. That there's an email from Peterson to  
13 Daphne Morton, it's noted in the deposition, Exhibit 12,  
14 and it says, quote, and this is on page 28 of our report,  
15 "We have not issued permits for partial roofs in the past  
16 unless the shingles were less than a year or two old and  
17 the color matched well." And then another email that  
18 says, "Attached, please find the building permits that  
19 you submitted. The applications have been denied based  
20 on the local building code amendments listed below." So  
21 essentially that's really what we're referring to.

22 Q. Okay. So is it the emails or his testimony that  
23 you're relying upon, just so I'm clear?

24 A. I think it's both. I mean I think they kind of  
25 say the same thing.

1 Q. And do you specifically indicate where in the  
2 deposition transcript you rely upon his testimony? Do  
3 you have that information?

4 A. I don't have that in front of me.

5 Q. Well, is it in the file? We have your file. I  
6 didn't see it in there.

7 A. I think we list in here it's within certain  
8 number of pages. It's not the whole depo that we're  
9 relying on. Just a second. (Examining document.) No.  
10 I can't tell you right now where it is within the depo.

11 Q. All right. Next item is Southgate exhibits to  
12 deposition of John Peterson. So did you rely upon the  
13 exhibits to the dep, and if so, which ones? The emails  
14 were part of the exhibits so we can move past that.

15 A. The emails.

16 Q. Anything other than the emails?

17 A. No, I think just the emails.

18 Q. Then Southgate exhibits to Juergen Fuss's  
19 deposition. Did you rely upon any of those?

20 A. Yeah.

21 Q. That means the exhibits to that dep transcript,  
22 so which ones did you rely upon?

23 A. Oh, we didn't rely on exhibits, we just -- other  
24 than the building code stuff that he had already  
25 reprinted.

1 Q. Okay. So the same stuff that you --

2 A. Same stuff, same stuff we reprinted, yeah.

3 Q. So the only exhibits are building codes --

4 A. Yeah, just building code stuff.

5 Q. And then you've got Southgate exhibits to James  
6 Stefanek deposition. Which exhibits to Stefanek's  
7 deposition did you rely upon for any of your opinions?

8 A. Just a second. (Examining document.) None of  
9 them.

10 Q. Okay. And then next item is Southgate  
11 deposition transcript of James Stefanek. Did you rely  
12 upon any of Mr. Stefanek's testimony?

13 A. No, we just reviewed it.

14 Q. Then Southgate deposition testimony transcript  
15 of Juergen Fuss. Did you rely upon any of Mr. Fuss's  
16 testimony?

17 A. Yeah, we actually talk about that in the report  
18 and we are specific to what that is. Just a second.

19 Q. Sure.

20 MS. PHILLIPS: Page 30 of 37.

21 THE WITNESS: Page 30, yeah.

22 Q. BY MR. RUDA: Which pages of his testimony?

23 A. Page 30 of 37 on our report, and pages 88  
24 through 93, and this is his, he's relating his  
25 conversation with the city building code official, John

1 Peterson. He's recalling what the requirements were.

2 Q. All right. And is your opinion that, "We concur  
3 with Mr. Fuss's interpretation and we also believe that  
4 the damage is extensive enough to warrant full  
5 replacement," is that what you took from Mr. Fuss's  
6 deposition?

7 A. That's what we took that he was recommending,  
8 yes.

9 Q. So it's your opinion that that's what Mr. Fuss  
10 recommended based upon the testimony at pages 88 to 93,  
11 is that correct?

12 A. Yes.

13 Q. It's not that Mr. Fuss was repeating what  
14 Mr. Peterson said on those pages?

15 A. I think Mr. Fuss has the opinion that full  
16 replacement is required because he's given that opinion  
17 by the building code official.

18 Q. Okay.

19 A. Who is the one that ultimately would make that  
20 decision, not Mr. Fuss.

21 Q. Then you also indicate you rely upon the  
22 Forensic Weather Consultant's report, and we talked about  
23 that at the beginning of the deposition; that's  
24 Mr. Altshule's report, correct?

25 A. Correct, and we paraphrase that on page 1 and 2

1 of our report, the areas that we relied on.

2 Q. And then the last item here is Village of  
3 Streamwood Roofing Ordinance, not dated. Do you remember  
4 what that is, sir? I actually have a copy of that if you  
5 want to see it.

6 A. Yeah, I haven't looked at it in a while. I  
7 didn't pull it up. I looked at it briefly yesterday but  
8 I didn't bring it along.

9 Q. Well, did you rely upon it for any of your  
10 opinions?

11 A. Yes.

12 Q. Okay. How so?

13 A. Well, we paraphrase the parts that are important  
14 in our report, but generally the number of roofs that are  
15 permitted, the sheathing requirements and the H clip  
16 requirements, which is bullet point No. 2 on here. A lot  
17 of it is pretty standard stuff in terms of flashings.  
18 The attic ventilation requirement, I talked about that.  
19 Ice barrier is required on these roofs. And then item  
20 No. 8, which is the siding requirements that they have on  
21 this. So these -- and the ITTEL issues that I talked  
22 about. So these are the things that we referenced.

23 Q. All right. Let's turn to page 27 of your  
24 report.

25 A. Okay.

1 Q. On page 27 of the report, middle the paragraph  
2 8, you're quoting from the Streamwood code, correct?

3 A. Yes.

4 Q. And it goes on to the next page, on 28 of 37, is  
5 that correct?

6 A. Yes.

7 Q. The quote that you've got that starts on 27,  
8 that's the current code as of when you wrote the report,  
9 is that correct?

10 A. Yes.

11 Q. And that code pertains to both roofing and  
12 siding, is that correct, that section of the code?

13 A. Yes.

14 Q. Is there any exception in this section of the  
15 code to partial replacement of roofing and siding?

16 A. Yes, if it meets the color match of 1 to 2  
17 percent value on the siding match chart as distributed by  
18 ITEL Laboratories.

19 Q. Does ITEL Laboratories have anything to do with  
20 shingles?

21 A. Yes.

22 Q. In regard to shingle matching, explain to me how  
23 ITEL works.

24 A. Same, same way. I can use the same exact tool  
25 to, that I just talked about. There's two different

1 ways. I can ship a shingle to ITEL down in Florida, or I  
2 can take a photograph of it and measure it and fill out a  
3 form online and send it to them and they will analyze it  
4 and give you a probability of availability basically.

5 Q. Did you do so in regard to the Southgate  
6 complex? Did you submit any shingles, either the gray or  
7 red shingles, to ITEL?

8 A. No.

9 Q. So it's possible that there could be a match for  
10 the gray and/or red shingles, is that correct?

11 A. In my opinion, no, not based on the age of the  
12 shingles. Shingle manufacturers, if you're in this  
13 business, you learn that about every ten years they  
14 change their mixtures and their color patterns. They  
15 want to sell shingles. They don't want to sell  
16 individual shingles, they want to sell whole roofs. So  
17 these are a blended shingle and you're not going to find  
18 a match for these.

19 MS. PHILLIPS: Can we take a break real  
20 quick for two seconds?

21 MR. RUDA: Sure.

22 (Break taken from 12:50 p.m. to 12:55 p.m.)

23 BY MR. RUDA:

24 Q. Sir, I want to go back to the code reference on  
25 page 28.

1 A. Yes.

2 Q. Am I correct that the exceptions contained here,  
3 it says, "In addition to any other requirements contained  
4 herein, permits for partial replacement of roofing and/or  
5 siding in all structures may be allowed with written  
6 approval of the building official when the following  
7 conditions are met." Is that's what it says, that's the  
8 prefatory comment, right?

9 A. Yep.

10 Q. And then it lists the different things, is that  
11 correct?

12 A. Correct.

13 Q. I am correct, am I not, that the only ITEL  
14 submission that's required is in regard to siding?

15 A. You are correct.

16 Q. So there is no ITEL submission in regard to  
17 roofing replacement?

18 A. You are correct.

19 Q. So according to code, you could partially  
20 replace shingles on a roof, is that correct?

21 MS. PHILLIPS: Objection to the form of the  
22 question, foundation.

23 A. I don't think that's what it says so I would  
24 disagree with that.

25 Q. BY MR. RUDA: Okay. Would you agree with me



1 that the code actually allows there to be an exception  
2 granted to partial replacement for shingles?

3 MS. PHILLIPS: Objection to the form of the  
4 question, foundation.

5 A. (Examining document.) Yes.

6 Q. BY MR. RUDA: In regard to this particular  
7 matter, the Southgate matter, do you know, did Southgate  
8 ever seek to do any partial replacement of roofs, seek to  
9 get permits issued in regard to the same?

10 A. Not that I'm aware of. In our permit review of  
11 the files we didn't see anything in there seeking that.  
12 We know that 16 of the roofs have been replaced. We did  
13 inspect those 16 roofs as part of our process.

14 Q. In terms of -- strike that. Pardon me. You had  
15 earlier mentioned, if you recall, matching, you used the  
16 word "matching," right, sir? You remember that?

17 A. Hm-hmm.

18 Q. I take it hm-hmm means a yes?

19 A. I'm sorry, yes.

20 Q. That's fine.

21 A. Mouthful of peanuts.

22 Q. That's all right. In regard to any opinions  
23 that you've authored in this report, are any of them  
24 based upon your understanding of what matching is?

25 A. Well, I have an opinion about matching.

1 Q. Let's start with that. We'll start that way.

2 A. Yeah.

3 Q. Do you understand, when I use the term

4 "matching," what I mean?

5 A. Yes.

6 Q. Is it a term of art in a particular industry?

7 A. Yes.

8 Q. What industry?

9 A. Certainly the insurance industry.

10 Q. So when I'm using the term "matching," you  
11 understand it to be a term of art in the insurance  
12 industry. What do you understand matching to mean?

13 A. Well, I think there are two, from my standpoint,  
14 I think there are two parts to that, to that question. I  
15 think there is a policy question, what's in the policy,  
16 what does the policy allow for, what are the provisions  
17 within the policy, that's one part of it, and then I  
18 think that the other part is the reasonable expectation  
19 that the consumer might have in terms of what their  
20 expectations are for restoring damaged property to a  
21 pre-loss condition.

22 Q. Okay. Your report does not contain any policy  
23 analysis, is that correct?

24 A. That is correct.

25 Q. And your report does not contain any opinions

1 concerning the reasonable expectation of a consumer  
2 arising out of a policy of insurance, is that correct?

3 A. That is correct.

4 Q. So in regard to this particular matter, am I  
5 correct that you have no opinions in regard to matching  
6 as it applies to this matter vis-a-vis the terms of this  
7 insurance policy?

8 A. Not with regard to the policy, correct.

9 Q. Okay. In regard to matching then, do you have  
10 any opinions concerning matching that apply in some  
11 fashion to this particular loss at Southgate?

12 A. I think the uniqueness of this building code  
13 really formulate our opinions here.

14 Q. Okay.

15 A. And the, I have an opinion that both the  
16 shingles and the siding are no longer commercially  
17 available, both in terms of color and in terms of texture  
18 on the siding in particular, so that if partial repairs  
19 are attempted it's going to kind of look like a car that  
20 was in an auto accident, went to the auto shop and came  
21 out with a new fender but the new fender was a completely  
22 different color.

23 Q. So the idea of matching, it's not an insurance  
24 concept or what's in the policy or what a consumer might  
25 expect from reading what's in the policy, your opinions

1 about matching relate solely to your interpretation of  
2 the building code and the fact that shingles and siding  
3 in your opinion are no longer available, is that correct?

4 MS. PHILLIPS: Objection to the form of the  
5 question. Go ahead.

6 A. Correct, but the commercial availability I think  
7 is the biggest issue from my standpoint.

8 Q. BY MR. RUDA: Okay.

9 A. Yeah.

10 Q. Well, sir, you would agree with me that the  
11 policy of insurance controls in terms of what an  
12 insurance company would have to pay for to replace in  
13 regard to anything that's damaged, is that correct?

14 A. Yeah, the contract is the contract.

15 Q. Okay.

16 A. Yeah.

17 Q. Now I noted in looking at your report, and if  
18 I'm wrong, tell me, but all the siding damage that's  
19 noted is all to north or west sides or elevations, is  
20 that correct?

21 A. Yeah, some southwest as well, little bit of,  
22 yeah.

23 Q. A handful, right?

24 A. Right.

25 Q. If you have four sides to these buildings, that

1 would mean there's some sides that have no hail damage,  
2 is that correct?

3 A. Yes, based on our look, yes.

4 Q. Does your opinion encompass replacing sides of  
5 the building, that is the siding on sides of buildings  
6 that sustained no hail damage?

7 A. Yes.

8 Q. Why?

9 A. Because of the ordinance requirements within the  
10 City of Streamwood.

11 Q. Based upon your interpretation of the same?

12 A. Yes.

13 Q. Okay. In that regard -- strike that. Is there  
14 also no damage to certain soft metals, gutters, vents,  
15 things of that nature, on certain sides of these  
16 buildings?

17 A. Yes.

18 Q. Same as the siding I take it, correct?

19 A. Yes.

20 Q. The damage is primarily on the north and west  
21 with a handful of southwest elevations, right?

22 A. Yes.

23 Q. Okay. Is your opinion that all those need to be  
24 replaced, even the undamaged soft metal portions, to kind  
25 of put that all together in one simple statement?

1           A.     Yes, and this is, again, based on discussions  
2 with the building code official. They, I don't know, I  
3 didn't see that this was necessarily vetted out in his  
4 deposition, because I don't know that whoever was taking  
5 the deposition knew to ask the question, but they look at  
6 the siding and the window wrap and the fascia wrap as all  
7 being a system, so this color match issue for them is  
8 really the envelope of the building, if you will;  
9 everything that is on that exterior envelope is all kind  
10 of one system. So if you're replacing the metal on two  
11 sides because it's damaged, it would be my  
12 interpretation, in talking to them, that when the rubber  
13 hits the road at the end of the day they're going to  
14 require it on all four sides for that same reason.

15           Q.     And the opinions in the report about what code  
16 requires, those are your opinions, correct?

17           A.     Well, they're my opinions based on talking with  
18 the building code officials and how they will choose to  
19 interpret. Understand that building code officials --  
20 this is why I find it unique that in this particular case  
21 they actually specify Tyvek. I do a class for building  
22 code officials around the country, and it's called, "Just  
23 Say No," and building officials are supposed to approve  
24 and deny, they are not supposed to design. And by  
25 installing into their building code the word "Tyvek,"

1 they've put an element of design in which is not what  
2 they're supposed to do.

3 Q. They do it all the time, though, don't they?  
4 Sometimes?

5 A. That's why we give them classes. That's why  
6 we're trying to give them a class telling them don't do  
7 that.

8 Q. Sometimes building inspectors are doing design,  
9 they're just telling you you have to do it this way, not  
10 the other way, right?

11 A. And they're not supposed to do that. They're  
12 supposed to say put a shop drawing together, I'll deny or  
13 approve it. So we never know at the end of the day what  
14 they're going to do, we have to base it on those  
15 conversations, and my sense is is they're going to be  
16 pretty picky in this jurisdiction.

17 Q. I might be wrong, but in the -- I'm saying it  
18 this way, if I'm wrong, I'm just trying to get it all.  
19 Does your report reference any conversations with  
20 building code officials, Mr. Peterson or otherwise?  
21 Maybe I missed the conversations.

22 A. (Examining document.) Cryptically it does.  
23 Like Conclusion 7.1.1.

24 Q. What page is that?

25 A. Page 30. "City has indicated repair or patching

1 is not applicable and will not be permitted." Those are  
2 the comments essentially. They're laced through here.

3 Q. Okay.

4 A. Yeah.

5 Q. So you'll agree with me the report doesn't say a  
6 conversation with Mr. Peterson or some other building  
7 code official?

8 A. No, it does not enumerate that conversation word  
9 for word, no.

10 Q. How many conversations did you have -- well,  
11 strike that. Who did you talk to at the building  
12 department at the Village of Streamwood?

13 A. John Peterson.

14 Q. When did you talk to Mr. Peterson?

15 A. I can't recall. Before the report was issued.  
16 It's towards the end of issuing these reports, I know  
17 that. Mr. Johnson had conversation with them as well.  
18 Section 7.9, for example, says, "Per communication with  
19 John Peterson, City of Streamwood, 1/2" plywood (with H  
20 clips) is the minimum sheathing acceptable to  
21 Streamwood." So that would be where we were -- we were  
22 looking at their code and calling and saying we have some  
23 questions, okay?

24 Q. Is that your telephone conference with him  
25 concerning sheathing or Mr. Johnson's?



1 A. That one was Johnson's.

2 Q. There's an email from Johnson with some issues  
3 about sheathing, et cetera?

4 A. Yeah.

5 Q. That's a follow-up because he had a question?

6 A. Exactly.

7 Q. So you have one conversation with Mr. Peterson?  
8 I'm asking you specifically.

9 A. One conversation, yeah.

10 Q. And what did Mr. Peterson -- was it over the  
11 phone or was it in person when you were visiting?

12 A. No, just over the phone.

13 Q. Anybody else on the call other than you and  
14 Mr. Peterson?

15 A. No.

16 Q. Tell me, as best you recall, what Mr. Peterson  
17 told you during that telephone call.

18 A. I asked about the siding issues and he again  
19 reiterated this ITEL thing that they're doing, and I  
20 indicated to him that we had, I had the ITEL charts with  
21 me and I didn't find anything that I thought, you know,  
22 was close, and would that be sufficient to use the  
23 charts, and he said, well, we're probably going to make  
24 them, you know, actually ship a piece of siding down  
25 there to give a final opinion on that.

1 Q. So he said, he was being particular, the code  
2 says you've got to ship it down there so you have to do  
3 it, right?

4 A. Yeah.

5 Q. Did he say anything else about the siding other  
6 than that?

7 A. No, that was really it.

8 Q. Was there anything else he said during the  
9 conversation?

10 A. I asked about the roofing.

11 Q. Hm-hmm.

12 A. And I said that the concern, I gave him an  
13 interpretation that I have of the building code and  
14 wanted his take on it.

15 Q. What was your interpretation that you told him  
16 about?

17 A. My interpretation had to do with the fact that  
18 the shingles needed to be installed per manufacturer's  
19 published instructions, did he agree with that? He said  
20 yes. And he said all products have to be installed per  
21 manufacturer's published instructions. I said okay, so I  
22 have shingles on these roofs and someone is advocating  
23 partially removing and repairing them and sliding new  
24 shingles in. He said okay. I said I can't identify the  
25 manufacturer of the shingles that are on the roof

1 currently and so therefore, as a building code official,  
2 if I'm in your shoes, I can't identify a repair protocol  
3 because I need the manufacturer to do that, and he said  
4 you're correct. So how do I physically install new  
5 shingles into existing shingles when I can't find the  
6 brand, the new shingle isn't tested with the old shingle  
7 in terms of the wind load requirements that are in the  
8 code? And he said, well, you're going to have, under the  
9 alternative design you're going to have to have a  
10 professional sign off on all of that. I said I haven't  
11 found one in the country that will do that, and he said I  
12 imagine you haven't. So in a nutshell --

13 Q. Did he say anything else?

14 A. No, that was basically the conversation about  
15 thinking a little bit about what the code really  
16 requires. So in that sense I was left with the feeling  
17 that these roofs all have to be replaced and partial  
18 replacement is not going to be even contemplated by the  
19 city.

20 Q. You recall earlier in the deposition you  
21 testified that, either you or your employees, when they  
22 were out there, found evidence that there had been  
23 partial repairs made to roofs other than the 16 that were  
24 replaced?

25 A. Yep.

1 Q. Did you do a building code analysis to see what  
2 permits had been issued previously?

3 A. There were no permits issued. No permits were  
4 issued on those that I could see, and they were done by  
5 maintenance, probably maintenance people of some kind or  
6 somebody who came by and patched in a few shingles.  
7 Might have even been individual homeowners. This happens  
8 all the time.

9 Q. So you did go into a search of the building  
10 department records? Did you do that personally?

11 A. No.

12 Q. Who did it?

13 A. We can do that online.

14 Q. So who did it?

15 A. Martha Miller. And there was no, no indications  
16 of partial repair permits at all.

17 MS. PHILLIPS: Off the record one quick  
18 second.

19 (Discussion held off the record.)

20 Q. BY MR. RUDA: Does your report reflect that your  
21 company did a search of all the building permits issued  
22 to Southgate?

23 A. (Examining document.) Just a second. Right  
24 above, on page 4, it should say 1.2 where the numbers are  
25 off?

1 Q. Okay.

2 A. It says, "According to the Cook County website."  
3 We do a search on the Cook County website and then the  
4 city, and that just gives us a -- but it does not  
5 indicate that we did that. That is a standard practice  
6 for us.

7 Q. Let me ask you a question. You know that Martha  
8 did it because it's a standard practice?

9 A. Yeah.

10 Q. And she would have put it in the report if there  
11 were some other permits issued?

12 A. Yeah, we only note it if there's a, if it's  
13 probative to the work that we're doing.

14 Q. So it's possible there were other permits issued  
15 but not for roofing or siding?

16 A. It could be a permit for an air conditioner.  
17 Yeah, we just, I mean if we were to list, on all these  
18 searches that we do, you know, we had a department  
19 complex out in Phoenix, 18 buildings, and they had 300  
20 permits. It would take too many pages to list every  
21 permit. So only things that we think are related that  
22 may be probative, and there was nothing with regard to  
23 roofing.

24 Q. Did you do a search of building permits issued  
25 in Streamwood to determine if, for example, they have

1 allowed homeowners to do partial roofing or siding  
2 replacement as opposed to replacing the entire roof or  
3 all the siding on a structure?

4 A. No, did not.

5 Q. Okay. If Streamwood had done that, would that  
6 indicate to you that they might be willing to allow  
7 partial replacement of shingles or siding be done in  
8 regard to the Southgate complex?

9 A. Not necessarily. A single-family residence in  
10 terms of line of sight where you would see only the front  
11 and the right elevation at a time as you're walking by  
12 the building, as opposed to these where you can stand in  
13 one of the courtyards and you can literally see all four  
14 sides of buildings in the same lines of sight in multiple  
15 times, multiple directions, that would be a different  
16 take in terms of how these are sited on the land.

17 Q. Well, you wouldn't be able to see all four sides  
18 of the building if you stand in one location, would you?

19 A. Not of one building, but you'll see all four  
20 sides of five buildings.

21 Q. Of certain buildings.

22 A. Yeah, that's the problem. So you'll see  
23 different elevations and the buildings are pretty close  
24 in.

25 Q. I take it it's your opinion, sir, that the

1 weathering on the siding is all uniform throughout the  
2 entire complex; all the buildings looked identical to one  
3 another at the time that you and your employees were  
4 there?

5 A. No, the weathering is different.

6 Q. So on individual buildings there's different  
7 weathering even within the building itself from side to  
8 side, is there not?

9 A. Yes, there's different weathering on south side  
10 exposures where there's trees and where there's not  
11 trees. So, yeah, the weathering, and that really, I'll  
12 tell you when that really shows up. That shows up when  
13 you look at -- I had a complex down in Iowa very similar  
14 to this in Des Moines where they had done this exact same  
15 contemplated situation and they replaced sides and  
16 sections, and I mean it looked like, it looked like  
17 Joseph's technicolor dream coat when it was done in terms  
18 of the multiple colors and patterns that were on these  
19 buildings. It looked terrible.

20 Q. Is there a way to treat siding in some fashion  
21 to make it appear uniform?

22 A. It can be painted.

23 Q. Other than painted?

24 A. No.

25 Q. Turn to page 6 of 37.

1 A. Okay.

2 Q. I think it's 2.3, where it says, "Generally."  
3 Are we evened up to the right section?

4 A. Yes.

5 Q. Okay. That's a description of the damage that  
6 you found on the buildings. When I say "you," I mean you  
7 and your company, correct?

8 A. Correct.

9 Q. When you indicate impact damage, are you  
10 referring specifically to the hail damage from April 5th  
11 or are you referring to just impact damage from whatever  
12 source and/or prior events?

13 A. No, at this point in the report we are typically  
14 referring to impact from hail from this storm event.

15 Q. So were chipped shingles caused by the hail?

16 A. In some cases, yeah, there are some chips.

17 Q. In all cases or some cases?

18 A. In some cases.

19 Q. What else could cause chipped shingles besides  
20 the hail event on April 5th?

21 A. Ice dams, chipping off at the, in the first two  
22 feet of the roof area if somebody was up there cleaning  
23 off snow and ice. We tried to, we did see some of that  
24 on the roofs. We tried to, we stayed out of those areas,  
25 not tried. I want to add that when we are, and you'll



1 notice this on, just a second (examining document.)  
2 Yeah, we typically are staying out of what we call  
3 walking paths, walking areas on roofs, which are next to  
4 walls and things like that, to stay out of the argument  
5 of this is mechanical, foot traffic damage, those kinds  
6 of things.

7 Q. And mechanical just means induced from some  
8 other source, whether accidental or intentional, right?

9 A. Correct.

10 Q. Creased shingles, would that be caused by  
11 something other than hail?

12 A. Yep.

13 Q. Is it caused by hail at all or --

14 A. Creased shingles are typically not caused by  
15 hail. It's a wind issue.

16 Q. Broken and torn shingles at rake edge and in the  
17 field, that's caused by what?

18 A. Wind.

19 Q. Unsealed shingles are caused by what?

20 A. Wind.

21 Q. Missing and displaced shingles are caused by  
22 what?

23 A. Wind.

24 Q. Is it your opinion that the wind in the storm of  
25 April 5th caused the broken, torn shingles, unsealed

1 shingles and missing and displaced shingles?

2 A. Just a second. (Examining document.) Yes.

3 Q. Could the prior events have caused the ones in  
4 '03, '04 and '06 that we talked about earlier as  
5 reflected in your report?

6 A. No. We don't think so, because on the loose  
7 shingles that we saw, what we didn't find -- these  
8 shingles have a glue tab on the bottom, all right, that  
9 glues them down, and on the shingles that we found that  
10 were loose, there was seal transfer and granule transfer  
11 to the back side of the shingle that's lifted. In the  
12 manufacturing process, the way the shingles are designed  
13 and the way they're manufactured, I mean they're  
14 processed, you have your mat and they put a hot adhesive  
15 glue over the top of that and then they drop their  
16 granules into that and they put it through a roller, and  
17 then it's cut to size and then those glue tabs are  
18 squirted, the glue is squirted on the shingle, so the  
19 only way that you can have granule transfer on the back  
20 side of that shingle is if it was sealed and then it  
21 pulled.

22 The other thing you look for is you look for  
23 debris and dust and discoloration under the field of the  
24 shingle and we didn't see that, and that's shown in our  
25 pictures. So these are shingles that had been recently

1 unsealed and hadn't been unsealed, you know, five, six,  
2 seven, eight years ago, with other events.

3 Q. And they would be unsealed as a result of the  
4 hailstorm in 2010?

5 A. Hail and wind, yes.

6 Q. All right. And when you say you can tell that  
7 it wasn't recent, it's based upon what you just  
8 described, that's why you can tell it was not recent?

9 A. Yes, and this is actually fairly well-detailed  
10 in the literature, the peer-reviewed literature that's  
11 out there in terms of inspecting these kinds of things.

12 Q. Is there a source that you refer to for this? I  
13 use the term "authoritative." By that what we lawyers  
14 mean is some source that you look to that describes this,  
15 that describes the protocol or the testing or indicates  
16 if you see this, this is what it means.

17 A. McNulty's report 2000, January 2000,  
18 "Composition Performance, Function and Standards of  
19 Asphalt Shingles, Reroofing Versus Tear-Off," the ARMA  
20 Technical Bulletin 223 talks about some of that issue,  
21 the, the ASTM standard test method for measurement of  
22 asphalt shingles with uplifting talks about that sealant  
23 transfer issue. "Self-Sealing Asphalt Shingles,"  
24 Technical Bulletin 3.0, "Is My Roof Wind Damaged" talks,  
25 from Donan Engineering, talks about proximate cause to

1 wind damage and what you look for. These are all other  
2 sources that are out there that give us some, I wouldn't  
3 call them guidelines, I would call them other approaches  
4 that are used to look for signature patterns that would  
5 indicate that it's a shingle that is recently displaced.

6 Q. So these are authoritative in the sense that  
7 everyone agrees these are guidelines that are used for  
8 people doing inspections to try and make determinations  
9 as to causality on what they see?

10 A. Yes. Or to eliminate causality as well.  
11 Equally as important.

12 Q. On page 8 of 37 through 11 of 37, there are  
13 certain photographs of certain building sites, is that  
14 correct? That's what reflected there?

15 A. Yes.

16 Q. And those pages all document the hail hits;  
17 they're circled and marked in some fashion, is that  
18 correct?

19 A. Yes.

20 Q. And for these buildings, these are all the  
21 buildings that were fully inspected, correct? So it's  
22 all the hail hits that's reflected in the  
23 photodocumentation? In other words, every hail hit is  
24 reflected in these photos on these buildings, right?

25 A. Yes, exactly. Yeah, there's 20.

1 MS. PHILLIPS: But only of that elevation.

2 A. Only of that elevation. That photo is only  
3 showing that elevation.

4 Q. BY MR. RUDA: Of that particular elevation.

5 A. Right. I'm showing 20 --

6 Q. For example, yeah, look at page 8 of 37,  
7 Building 7. Which elevation is that?

8 A. North.

9 Q. And it shows how many hits on the north roof?

10 A. Six, I think, on there. No, there's some over  
11 in the corner. One, two, three, four, five, six, seven,  
12 eight, there's some over by the chimney. I think it's  
13 eight. Eight or nine.

14 Q. All right. I'm not trying to be argumentative.  
15 The photograph that's attached in your report here, I  
16 can't really see the hits. You probably can. I can see  
17 circles, you know, but --

18 A. Right.

19 Q. -- does this photo adequately in your opinion,  
20 you're the expert, show me the hits? Can you point to  
21 them? Other than to say it's a hit in the circle?

22 MS. PHILLIPS: Objection to the form of the  
23 question. Go ahead.

24 A. This is an overview photo --

25 Q. BY MR. RUDA: Okay.

1           A.     -- to show you that in fact there are eight to  
2     ten hits, areas that we have marked.

3           Q.     This is to show me that here's the areas that  
4     are marked, this does not necessarily specifically  
5     describe the individual hits and show it.

6           A.     Specific to this particular roof slope on this  
7     particular building, which is Building No. 7, in our  
8     photo logs we can then show you a representation of four  
9     or five of these where we actually put the camera like  
10    this (indicating.)

11          Q.     Hm-hmm.

12          A.     So, for example, that one right there  
13    (indicating), we may have chosen. We may have chosen  
14    this one (indicating). But if we circled it, we will  
15    then take a representation to be able to say here's what  
16    we saw on this roof slope, there were eight of them,  
17    here's the overview, and here's what they looked like  
18    specifically. Not every single one of them, but here's a  
19    representation of what they looked like.

20          Q.     And does your photo log indicate which of the  
21    eight circled hits are more particularly photographed in  
22    a close-up?

23          A.     Yes.

24          Q.     Okay. So your photo log is going to show in, in  
25    regard to the photograph here in regard to 245-254

1 Butternut Lane, Building 7, which of the hits are  
2 circled? There will be a photo log saying here's a  
3 close-up of whatever I'm pointing, I'm just using this as  
4 an example, of this particular one I'm pointing at?

5 A. Right.

6 Q. Okay. Would you agree with me that this photo  
7 that's attached to your report -- well, strike that.  
8 Maybe you don't. Can you show me in the photograph  
9 that's attached to your report the weathering? Can you  
10 show it to me and describe it to me, in this particular  
11 photograph, which would be indicative that the hit  
12 occurred back in April of 2010?

13 A. No, not in that photo. I could probably do it  
14 on page 10 of that photo, and I could probably do it on  
15 page 11 of the upper photo.

16 Q. Let's turn to page 10 then, which is the 533-539  
17 East Avenue Building 31. Which elevation does that show?

18 A. This would be the northwest-facing lower left  
19 roof elevation.

20 Q. Okay. I wanted to ask a question, and I think  
21 this is covered but I just forgot to ask the complete  
22 question. Did you or did any of your employees find any  
23 hail damage that predated April 5th of 2010 on any of the  
24 roofs?

25 A. No.

1 Q. Okay. Back to this photo then on page 10. So  
2 you said this photo can be used for you to explain to me,  
3 by using the photograph, the weathering process that you  
4 described which indicates to you the date of when the  
5 hail event occurred. Please do so.

6 A. This photo, in its JPEG form when I blow it up  
7 to 300 percent, I can do that.

8 Q. How about this photo?

9 A. I can't do it on this one. At court that's what  
10 we would do.

11 Q. Does your report indicate that you would need to  
12 blow it up to 300 percent in JPEG form to do it? The  
13 reason I ask, sir, is we only have what we have and what  
14 we've been given, so we're working with what's been  
15 disclosed and what your opinions are based upon that we  
16 have.

17 A. I don't know if it indicates that that's what  
18 one would need to do. That is a --

19 Q. I'm just asking --

20 A. No, I don't think it indicates that.

21 Q. All right.

22 MR. RUDA: So at this point I may reserve  
23 the right to complete the deposition when we have JPEG  
24 photographs that are blown up to 300 percent.

25 Q. BY MR. RUDA: That's on a computer screen, I



1 take it, sir, that you do that?

2 A. Yeah. Basically we, what we do is in trial  
3 situations, typically now we're seeing high-definition  
4 TVs used, and when I'm at the stand and I've got my  
5 mouse, I can pull the photo up and then I can zero in and  
6 really, I can go from 150 up to 400 percent, and you can  
7 even see the tactile, I mean the indentations, all kinds  
8 of things. It really works very, very well.

9 Q. Let me ask you a question.

10 A. The old-fashioned ELMO doesn't work well with  
11 these, okay? It just doesn't.

12 Q. It just gives you an image that's not quite as  
13 exact as the one you started with.

14 A. That's right.

15 Q. I understand that. Take a look again at Exhibit  
16 No. 5 and tell me, flip through real quick, can you tell  
17 me, are the photos, you know, the individual photos of  
18 hail damage contained therein somewhere that you can tell  
19 me?

20 A. Let me take a quick peek. (Examining document.)

21 MS. PHILLIPS: I did follow up with my  
22 office, and the Christina from the office, and she did  
23 say that apparently her and Vera were having some  
24 conversation about the downloading of images and that  
25 they're working on getting you guys a thumb drive --

1 THE WITNESS: Oh, these aren't our photos.

2 MS. PHILLIPS: -- of all of the photos, so  
3 I was unaware of that.

4 THE WITNESS: These are not our photos.  
5 Can't help you.

6 Q. BY MR. RUDA: Got it. So the photos in Exhibit  
7 No. 5, I think they're all MKA photos?

8 A. Yep, these aren't ours. That's probably why you  
9 are confused.

10 Q. I'm not confused. I was certain of what I had.

11 A. You were certain, right. Yes. I would testify  
12 today that this photo that's on page 10 will be in our  
13 overall report, photo logs. We have a JPEG of it, we put  
14 it into a Word document, and there will be, along with  
15 this, anywhere from three to five additional photos that  
16 will be close-ups of some of these hits.

17 Q. And then was there another photo in this report  
18 that you indicated?

19 A. Yeah, the next page.

20 Q. Page 11?

21 A. Yeah, the JPEG, we would be able to --

22 Q. Of both photos?

23 A. No, of the top photo. And I'll just, I'll just  
24 represent to you that even here you can see, if you look  
25 very closely right here where my finger is (indicating),

1 you can see a little black dot. You can see a little  
2 black dot.

3 Q. I can see the, in some of them I can see a dot  
4 sort of almost in the middle of many of the circles.

5 A. Yeah.

6 Q. That's the hail hit, right?

7 A. That's the hail hit. And if this were aged  
8 seven years, I wouldn't, with this gray-colored shingle I  
9 wouldn't be able to see that black dot in this small  
10 photo. It would be the same color as the gray shingle,  
11 and that's, that's the issue.

12 Q. Well, let me ask. Would there be hail hits then  
13 that happened to some of these roofs that you or your  
14 people wouldn't be able to see if you were doing a visual  
15 inspection?

16 A. No, no, you would see the hail hit.

17 Q. Okay.

18 A. You'd see it, but you wouldn't -- you would  
19 still see the displaced granule.

20 Q. Okay. So there would be a depression --

21 A. Depression, you'd see the displaced granule, but  
22 it would be gray in color, it wouldn't be black.

23 Q. Now I want to ask a question about the limited  
24 building inspections. Every elevation of the roofs were  
25 looked at for the limited building inspection as you

1 described?

2 A. Every roof on the property was walked.

3 Q. And every side of each building was examined,  
4 too?

5 A. Yes.

6 Q. Okay. So it wasn't just that your people went  
7 and looked at a building and found a hail hit on a couple  
8 shingles and stopped?

9 A. No. It's the difference between spending about  
10 four hours on a roof and two hours on a roof, you know.

11 Q. The opinions that have been expressed in this  
12 report in regard to what code requires, those are your  
13 opinions, correct, sir? You have those opinions? I'll  
14 start there first.

15 A. Yes, I have those opinions, yes.

16 Q. Is Mr. Johnson expressing, as you understand it,  
17 any opinions in regards to the code?

18 A. You are certainly more than welcome to ask him  
19 that question.

20 Q. I'm going to, but I'm asking if you understand  
21 he's offered up any opinions as to what code requires?

22 A. Yes, Mr. Johnson is qualified to answer  
23 questions regarding building code as well.

24 Q. Turn to page 25 of 37, sir, "Causation  
25 Statement." I think that should be 4.0, right?

1 A. Okay.

2 Q. Now do you, in the report in the end of that  
3 first paragraph there under "Causation Statement," you  
4 make reference to certain buildings and photographs. For  
5 example, see the first one that indicates, "See photos  
6 including but not limited to: 280-286 Butternut (building  
7 11)?"

8 A. Yes.

9 Q. All right. Are these photos that are, these are  
10 not photos contained in the report, these are other  
11 photos, correct?

12 A. Well, they are part of the report. Our report  
13 is a narrative and our report is a series of photo logs.

14 Q. Let me --

15 A. You haven't received the photo logs apparently.

16 MR. RUDA: Again, I'll just reserve the  
17 right to depose Mr. Irmiter in regard to the photo log  
18 and those photos once we get them if need be. I don't  
19 know. After we see them maybe we'll know.

20 Q. BY MR. RUDA: So the report that you've got  
21 here, sir, it's part of Exhibit No. 1, which is 37 pages  
22 long, your report must be longer then. Is there a photo  
23 log attached to it?

24 A. The photo, I believe the entire report is  
25 probably more like seven or 800 pages long with the

1 photos.

2 Q. Okay. And that's, besides the 37 pages of the  
3 report, it's a photo log and photos. Is it anything  
4 else?

5 A. For each building there's a photo.

6 Q. Anything else?

7 A. No.

8 Q. Sir, if you take a look at the  
9 second-to-the-last paragraph on page 25?

10 A. Yes.

11 Q. It reads as follows, "Based upon a reasonable  
12 degree of engineering certainty," and states an opinion.  
13 You are not expressing, you personally are not expressing  
14 any opinions to a reasonable degree of engineering  
15 certainty, is that correct?

16 A. No. I've been qualified in the federal courts  
17 as a building damage causation expert. My opinions would  
18 be based on my education, training and experience  
19 regarding building failures. As a trained and licensed  
20 building code official I have to understand the parts of  
21 the building code that deal with engineering,  
22 specifically components in cladding, wind load  
23 requirements, those kinds of things. So ancillary to  
24 that I have to understand the principles. I am not a  
25 licensed professional engineer.

1 Q. Okay. So the opinion part of it says, "The  
2 impact damages we observed to the exterior of the  
3 buildings are related to the storm event," that's just  
4 based upon what you described as your qualification,  
5 experience and training, et cetera, is that correct?

6 A. Yes.

7 Q. And, again, your opinion that it was based upon  
8 the April 5th, 2010 event is, as you've described it,  
9 that weather report, the inspection you did, the  
10 inspection that your people did concerning the weathering  
11 of the shingles, correct?

12 A. And the process of eliminating other things,  
13 yes.

14 Q. Now at the bottom of page 25 of 37, you have the  
15 opinion that "based on the age of the buildings and  
16 changes to the building and energy codes from the date of  
17 original construction to the date of loss, and specific  
18 requirements of the City of Streamwood, additional costs  
19 to repair will be required to meet the current required  
20 code." Is that a long way to say that the Village of  
21 Streamwood's current requirements, as you understand them  
22 to be, as you hold the opinions as to what they are, will  
23 require increased construction costs beyond merely  
24 replacing what's damaged?

25 A. Yes.

1 MS. PHILLIPS: Objection to the form.

2 A. There will be undamaged portions of the building  
3 that will require replacement, yes.

4 Q. BY MR. RUDA: I'm trying to circumvent this.  
5 You've described in your report what you relied upon in  
6 terms of the building code, conversations with  
7 Mr. Peterson, his deposition, Mr. Fuss's deposition, et  
8 cetera, for the building code portion of it in addition  
9 to your experience, training, certifications, et cetera.  
10 Is there anything else in regard to the bottom of page 25  
11 of 37 that you're relying upon other than what you've  
12 already mentioned for these opinions?

13 A. No.

14 Q. Sir, the siding that was removed from the  
15 clubhouse, did you determine that the siding had any  
16 identification on it? You know, a manufacturer's  
17 identification of some sort?

18 A. We didn't see the siding, it was already -- I'm  
19 confused by the question.

20 Q. I'm just asking for the clubhouse.

21 A. No, not for the clubhouse we didn't, no.

22 Q. When you were out there the clubhouse was  
23 already done?

24 A. Correct.

25 Q. Are you aware if the clubhouse siding had any



1 identification on it?

2 A. The original?

3 Q. Yeah.

4 A. No, not aware of that.

5 Q. Did you consult with Mr. Moe about that by  
6 chance?

7 A. No, did not.

8 Q. Okay. If the siding did have identification  
9 marks on it from the manufacturer, would that be a  
10 potential source to determine if replacement siding could  
11 be obtained for other buildings in the complex?

12 A. Absolutely. We would go directly to the  
13 manufacturer and bypass ITEL.

14 Q. Your report indicates that there was no roofing  
15 and siding all put on right around the time this  
16 converted from rental to condominium property?

17 A. Correct.

18 Q. Around 2000, is that correct?

19 A. Correct.

20 Q. So does it stand to reason that all the siding  
21 was, that was put on was purchased from the same  
22 manufacturer?

23 MS. PHILLIPS: Objection, calls for  
24 speculation.

25 A. It would make sense that it probably came from

1 the same source. I know there are four different colors  
2 out there of siding.

3 Q. BY MR. RUDA: What I mean is for those buildings  
4 there's four different colors --

5 A. Right.

6 Q. -- that within that variety every building  
7 that -- by the way, what are the four colors that are  
8 there?

9 A. Tan -- boy, I have to look at my photos again.

10 Q. Whatever. There's a blue, for example.

11 A. There's a light blue.

12 Q. For all the light blue buildings, it would be  
13 the same manufacturer that was done when it was all  
14 re-sided around the year 2000?

15 A. Yes.

16 MS. PHILLIPS: Objection, calls for  
17 speculation.

18 A. It would make sense.

19 Q. BY MR. RUDA: Well, according to the  
20 declarations and according to code, it would have to be,  
21 right?

22 A. Correct.

23 Q. Sir, I wanted to ask about the reference to  
24 CertainTeed shingles. That's one word, C-E-R-T-A-I-N,  
25 capital T-E-E-D. You make reference to that. You're

1     relying upon the CertainTeed shingle applicator's manual  
2     for some of your opinions, I take it?

3         A.     Yes.

4         Q.     Those relate only to CertainTeed shingle  
5     products, correct?

6         A.     They do.

7         Q.     Okay.  So unless these are CertainTeed shingle  
8     products, they wouldn't have any application to this  
9     particular matter, is that correct?

10        A.     Correct.

11        Q.     Did you or did any of your employees determine,  
12     in the areas that had been patched at the time that you  
13     were inspecting it, if there were any problems as a  
14     result of the patching of shingles on those building?  
15     And again we're talking about the buildings that had not  
16     been completely reshingled.

17        A.     We saw no performance issues.

18        Q.     As a matter of fact, your report indicates that  
19     all the roofs were performing well, as far as you could  
20     tell, until the storm event of April 5th, 2010?

21        A.     Appeared to be, yes.

22        Q.     How much patching had been done throughout the  
23     Southgate townhome complex?

24        A.     On the roofs?

25        Q.     Yeah.

1 A. Percentage-wise, 1 percent.

2 Q. One percent?

3 A. Yeah, pretty small amount.

4 Q. You mean of total roofs?

5 A. Yeah.

6 Q. One percent total roof space?

7 A. Yeah.

8 Q. Do you know how many buildings, let's say, out  
9 of the 50 -- I'm sorry --

10 A. 56.

11 Q. I keep mixing up 16 and 17.

12 A. Yeah, I don't recall at this point how many.

13 Q. More than a handful? I mean more than two or  
14 three?

15 MS. PHILLIPS: Objection to the form.

16 Q. BY MR. RUDA: If you know.

17 A. I wasn't on every single roof. What I recall,  
18 in driving through the property, you know, because you  
19 could see them from the ground if you know what you're  
20 looking at, that --

21 Q. Did any of your employees -- pardon me, go  
22 ahead.

23 A. If it's, you know, 1 percent, it probably  
24 affected six to eight buildings total.

25 Q. So 1 percent is based upon your visual

1 inspection of all the buildings driving through the  
2 complex?

3 A. Yeah, walking and driving the complex, yeah.

4 Q. Did any of your employees document how many  
5 buildings were patched?

6 A. No.

7 Q. On page 32 of 37, if you look toward the top,  
8 the fourth bullet point says, "Matching may not be  
9 possible." Am I correct, sir, we've already covered that  
10 with your prior testimony? When you're talking about  
11 matching here, you're making reference to what you  
12 believe to be primarily that the manufacturers are no  
13 longer making the shingles or siding that was at  
14 Southgate?

15 A. Correct.

16 Q. Did your, either your inspection or any of your  
17 employees' inspections, determine that there was any  
18 water penetration on any of the roofs?

19 A. We, we asked for, from the association, a list  
20 of any interior water damage that had occurred as a  
21 result of, or after, during or after the storm event, and  
22 we were told that there had been none reported to the  
23 live-in units. We did, in the attic inspection, I think  
24 we did two attic inspections, we did see limited evidence  
25 of water intrusion at the parapets, which is the roof

1 jump between a lower roof and an upper roof where the  
2 flashings come together, we did see some indication of  
3 water intrusion there, but it was minor to the point  
4 where it most likely wouldn't reach the ceilings below.  
5 It might get the insulation a little wet but it wasn't  
6 enough to ...

7 Q. You made no determination what the water  
8 penetration that your people found, as to cause of that,  
9 did you?

10 A. No, we did no sampling, no spray testing.

11 Q. So it could be totally unrelated to any hail  
12 damage?

13 A. Correct.

14 Q. Now, sir, is it your understanding, since you  
15 indicate you do have some experience in insurance  
16 matters, that if there's a hailstorm and there's hail  
17 damage to roofs, that the insurance policy covers  
18 replacement of shingles and/or the entire roofs that are  
19 damaged by hail?

20 MS. PHILLIPS: Objection to the form.

21 A. That's really, that's a specific policy  
22 question.

23 Q. BY MR. RUDA: Okay.

24 A. And a contract question to that policy, so I  
25 can't give you an answer on that.

1 Q. In terms of your industry, the business that  
2 you've described that you're in, is hail damage to a  
3 roof, and we'll talk about residential structures, even  
4 though this is not, it's multifamily, you know,  
5 residential, but they're basically like individual  
6 houses, that merely because there's a hailstorm and  
7 there's some hail damage to shingles, does that mean that  
8 the roof really should be replaced in your opinion?

9 A. Yes.

10 Q. Okay. And why is that?

11 A. The granule loss has occurred exposing the mat  
12 to degradation to UV rays. Typically what we see in  
13 these kinds of roofs is while no reported leaking is  
14 happening as of the time of our inspection, I can't tell  
15 you today what they're saying. We typically see in these  
16 storms, two to four years after these kinds of events  
17 when they are not replaced and/or repaired, that water  
18 damage then begins to start forming on the interior. The  
19 shingle is no longer a watertight membrane at that point  
20 because of the loss that's occurred, and it really has to  
21 do with the sun. I mean those granules are put on there  
22 to protect against the UV. That's the main focus for  
23 them.

24 Q. And in this particular matter, you indicated  
25 that generally speaking between two to four years you see

1 water penetration occurring after hail damage to  
2 shingles, is that correct?

3 A. Yes.

4 Q. In this particular matter though, your  
5 inspections were done in excess of three years after the  
6 hail loss that you determined was the causative event and  
7 there was no water penetration, is that correct?

8 A. Well, as I indicated, we saw evidence of water  
9 infiltration on some roof deck areas, some staining on  
10 roof decks, but we didn't have water getting to the  
11 conditioned living spaces yet.

12 Q. Maybe I misspoke. Sir, I am correct that your  
13 report does not reflect that there is any water  
14 penetration caused as a result of the hail damage event  
15 on April 5th, 2010?

16 A. That is correct.

17 Q. Okay. And, therefore, there is no water  
18 penetration, as far as you're concerned, in regard to the  
19 April 5th, 2010 event as of the time of the inspection,  
20 which was done at the end of July and beginning of August  
21 2013?

22 A. That is correct.

23 Q. Okay. So if there's no water penetration and  
24 it's been in excess of three years, is that indicative in  
25 fact that there isn't going to be any water penetration?



1 A. Not at all.

2 Q. Is that a possibility, that there won't be any  
3 water penetration as a result of the hail damage event?

4 A. I would not expect any water penetration on the  
5 undamaged shingles.

6 Q. What about on the damaged shingles, would you  
7 expect that to occur at some point?

8 A. Depending on the degree of damage, yes.

9 Q. Can you provide any opinion as to when it might  
10 occur since it hasn't happened after three years to any  
11 of these shingles?

12 A. Well, number one, we don't know that it hasn't  
13 happened. Because it hasn't been reported doesn't mean  
14 that it hasn't happened. We have plywood and OSB roof  
15 decks, which are installed with seams that are tight, and  
16 so water could be entering and collecting on the roof  
17 deck itself and not actually penetrating into the attic  
18 locations. There's a lot of attic insulation up there as  
19 well that could be collecting water. So I don't think  
20 anybody can rule out that water isn't getting in there  
21 yet.

22 Q. Let's assume, for purposes of my hypothetical --

23 A. I don't assume, sir. I can't.

24 Q. It's a hypothetical question so you must assume  
25 to answer to my question. Assume for my hypothetical

1 question that there is no water penetration as a result  
2 of the hail strike event of April 5th, 2010 as of the end  
3 of July 2013, beginning of August 2013; given that  
4 assumption, can you offer up any opinion as to when you  
5 might believe that there would be water penetration  
6 occurring?

7 A. No.

8 MS. PHILLIPS: Objection to the form of the  
9 question.

10 A. No, that is dependent on the amount of rain, the  
11 direction of the rain, wind, all kinds of things. That's  
12 a moving target. I don't think anybody could give that  
13 opinion.

14 Q. BY MR. RUDA: So it's possible there may never  
15 be any water penetration, in other words, is that  
16 correct?

17 MS. PHILLIPS: Objection to the form of the  
18 question.

19 A. I doubt that.

20 Q. BY MR. RUDA: You doubt that?

21 A. To say that there would never be water  
22 penetration on these roofs would be impossible.

23 Q. I did not say that, sir. I said --

24 A. You did say never.

25 Q. I said it is possible that there might not be

1 any water penetration because of the hail strike event of  
2 April 5th, 2010; do you disagree or agree?

3 MS. PHILLIPS: Objection to the form of the  
4 question.

5 A. Disagree. If these roofs are not replaced and  
6 if the damaged shingles are not taken care of there will  
7 be, those shingles will fail, absolutely. They'll  
8 continue to lose granule loss, they will continue to  
9 degradate. It's not self-correcting, that's the problem.

10 Q. BY MR. RUDA: Can you tell me, sir, for example,  
11 in regard to page 8 of 37, which is 248-254 Butternut  
12 Lane, Building 7, when you think these shingles would  
13 begin to fail and show water loss?

14 MS. PHILLIPS: Objection to the form of the  
15 question. Calls for speculation.

16 A. Don't know.

17 Q. BY MR. RUDA: Would you turn to page 33 to 37 of  
18 your report, sir? At the bottom it says, "Authors  
19 Statement." Do you see that there?

20 A. I do.

21 Q. Is what's written there correct or do you need  
22 to modify or change any of that?

23 A. (Examining document.) No.

24 Q. Okay. It says, "Mr. Johnson contributed to the  
25 causation analysis of the report." Is Mr. Johnson's

1 opinion a contribution to causation analysis or the  
2 entire opinion concerning causation analysis?

3 MS. PHILLIPS: Objection to the form of the  
4 question. Foundation.

5 A. I don't know. I mean we --

6 Q. BY MR. RUDA: We'll ask Mr. Johnson.

7 A. You'll ask Mr. Johnson.

8 Q. We'll ask Mr. Johnson.

9 A. Yeah. We worked jointly on this report.

10 Q. To what part of the causation analysis did  
11 Mr. Johnson provide opinions, sir?

12 MS. PHILLIPS: Objection to the form of the  
13 question.

14 A. Cause and effect; was the wind, was the hail  
15 sufficient in size to damage the shingles, damage the  
16 siding, damage the soft metals on the building.

17 Q. BY MR. RUDA: Next sentence says that you  
18 contributed to the scope of repairs and specific industry  
19 standards and requirements within the building codes and  
20 ordinances. Did you offer up more opinions other than  
21 merely scope of repairs and specific industry standards  
22 and requirements within the building codes and ordinances  
23 in this report, sir?

24 MS. PHILLIPS: Objection to the form.

25 A. Well, yeah, I mean I certainly have --

1 Q. BY MR. RUDA: You have a causation, right?

2 A. How can you not have a causation opinion and do  
3 scope? I mean ...

4 Q. Well, scope is the extent of damage. It may  
5 have nothing to do with why the damage caused to answer  
6 your question. But what did you --

7 A. Well, why are you doing -- I disagree with you.  
8 Why are you repairing? Why are you even writing a scope  
9 of repair if there's no damage?

10 Q. I didn't say there wasn't damage.

11 A. But intuitively I can't get to scope of repair  
12 without damage so you have to have some causation.

13 Q. Well, for example, your report reflects certain  
14 comments concerning H clips and sheathing, et cetera,  
15 which has nothing to do with the hail event, correct?

16 A. Absolutely.

17 Q. So that's a scope of repair that has nothing to  
18 do with why.

19 A. Right, that would be if they, if these folks  
20 hired us and they were just redoing their roofs, you  
21 know, what would we recommend. Yeah.

22 Q. It says here that both, you know, you and  
23 Mr. Johnson reviewed each other other's contributions to  
24 this report. What was Mr. Johnson's contribution to the  
25 report that you reviewed?

1           A.     Mr. Johnson's contributions to the report would  
2     have been starting after, let's see (examining document.)  
3     Starting on page 25 until the end of the report, page 37,  
4     would have typically been the co-authored sections of the  
5     report where we are reviewing each other's work and peer  
6     reviewing back and forth.

7           Q.     How would you be peer reviewing an engineer's  
8     work, sir? You're not an engineer. I'm just --

9           A.     Well, show me --

10          Q.     Sir, I'm asking because you said you peer  
11     reviewed it. Technically you're not his peer, you're not  
12     an engineer.

13          A.     I'm not his peer.

14          Q.     Okay. So you didn't correct any of his  
15     engineering work, I take that, or comment on it?

16          A.     Well, there are no engineering calculations that  
17     are done on this report.

18          Q.     Okay, all right.

19          A.     So from that standpoint I'm not correcting or  
20     reviewing his engineering calculations. I'm reviewing  
21     photographs with him, we're looking and saying do you  
22     agree that this is in fact hail damage, did this match  
23     what you saw when you went to the inspection.

24          Q.     Okay.

25          A.     We compared photographs, we compared our take on

1 looking at things.

2 Q. Let me ask --

3 A. Does this look like mechanical damage to the  
4 siding or does this look like hail damage to you.

5 Q. Does Mr. Johnson, as you understand it, since  
6 you consulted with him, does he use a different analysis  
7 than you did in regard to determining whether there was  
8 hail damage to the structure?

9 MS. PHILLIPS: Objection to the form of the  
10 question.

11 A. You will have to ask him.

12 Q. BY MR. RUDA: Did Mr. Johnson do any analysis as  
13 to the aging of the hail strikes, if you know?

14 MS. PHILLIPS: Objection, foundation.

15 A. You will have to ask him.

16 Q. BY MR. RUDA: Okay. So as far as you know, in  
17 this report in terms of the part of it that says the  
18 events that, that is the hail events that predated the  
19 April 5th, 2010 event, you're unaware if Mr. Johnson  
20 holds that opinion or not, is that correct?

21 MS. PHILLIPS: Objection to the form.

22 A. Again, you will have to ask him that question.

23 Q. BY MR. RUDA: You never asked him, sir?

24 A. That part of the report, as I indicated, was  
25 joint authored by both of us. We talked about those

1 events, we reviewed the weather data on those events. I  
2 certainly believe, as I sit here today, that he has the  
3 same opinion that I have, that in fact the most logical  
4 storm date that caused the damage that we saw was the  
5 April 5th, 2010 date and not dates that preceded that and  
6 not dates that postdated that. And the reason we ruled  
7 out the 2013 storm is because 16 of the roofs had been  
8 replaced already and we saw no indication of damage at  
9 all on those new roofs. If the storm event after the  
10 fact had caused damage, we would have anticipated at  
11 least seeing subtle, some kind of damage. We didn't see  
12 any.

13 Q. Did you examine all of the roofs that had been  
14 reroofed?

15 A. Yes, we walked all of them. There was no  
16 physical damage to the new roofs at all.

17 Q. That's reflected in your report, correct?

18 A. It indicates that we walked all the roofs. Yes,  
19 it does say that.

20 Q. Where does it say that in your report?

21 A. Just a second.

22 Q. What page?

23 A. (Examining document.) Very first paragraph  
24 basically says, "Our inspection was limited to damage."  
25 It says we inspected, "FBS was retained by Childress



1 Duffy to provide an inspection of the above-mentioned  
2 properties to ascertain the extent of damage caused by  
3 wind and hail, which was reported to have occurred on  
4 April 5th, 2010. Our inspection was limited to damage to  
5 the roofs, exterior cladding, windows and some attics."

6 Q. So is that what you're referencing, saying that  
7 you looked at the roofs that had already been replaced?

8 A. Yes.

9 Q. That means that you were able to look at those  
10 roofs, is that right?

11 A. Yes.

12 Q. Okay. Are there any notes or records that are  
13 contained in your file there that reflect any assessment  
14 of damage to the roofs that had been replaced, those 16  
15 roofs?

16 A. Yeah, there was no damage.

17 Q. But are there notes that reflect that somewhere?  
18 Not in here, other than what you read, but notes that  
19 anybody made?

20 A. No.

21 Q. Okay. Almost done here. Page 2 at the bottom,  
22 sir, where there's the opinion expressed as to a  
23 reasonable degree of engineering certainty about the  
24 damages at the complex?

25 A. Yes.

1 Q. All right. That's, that part of it, that  
2 engineering certainty, that's Mr. Johnson's opinion,  
3 correct? That's one of his?

4 A. Specific to the term "engineering" --

5 Q. Yes.

6 A. -- yes.

7 Q. Okay. Do you know how he, as an engineer, would  
8 determine that the hail events in '03, '04 and '06 did  
9 not cause any damage? Do you know how he does that? Has  
10 he ever explained it to you?

11 A. Yes.

12 Q. How does he do it?

13 A. Exactly the same way I explained that I do it.

14 Q. Okay.

15 A. By eliminating, by looking at the weather  
16 pattern and looking at the, how the shingle itself, how  
17 the hail impact presents itself.

18 Q. Basically the weathering of it?

19 A. It's a visual, it's a visual identification,  
20 yep.

21 Q. In Exhibit 5 here, turn to Bates page stamped  
22 89.

23 A. Are you done with 1 here?

24 Q. We're almost done. Beginning at page 89 and  
25 thereafter, it looks like a bunch of notes on, looks like

1 legal, maybe not legal size, 11 by --

2 MS. PHILLIPS: 8 1/2 by 11.

3 MR. RUDA: 8 1/2 by 11. Thank you.

4 Q. BY MR. RUDA: Whose notes are those?

5 A. Jim Irmiter and Josh Long's.

6 Q. And what do those notes pertain to?

7 A. These are site visit notes that they took while  
8 they were on each building.

9 Q. Okay. And are these notes used then to plug  
10 information into the report that you authored?

11 A. Yeah. Martha Miller takes these notes,  
12 transposes them into the site observations per building,  
13 and then that is reviewed by the person who took the  
14 actual notes and comparisons to make sure that nothing is  
15 omitted or put in incorrectly.

16 Q. So from Bates stamp page 89 through 110, are  
17 these all of the notes from Jim Irmiter and Josh Long?

18 A. Well, these two are right here, so. (Examining  
19 document.) Yes.

20 Q. All right. Are there any other notes that you  
21 have in your file other than these notes --

22 A. Nope.

23 Q. -- that they prepared?

24 A. Nope.

25 Q. Okay. The 2/13 disclosure reflects that your

1 opinions are based upon witness interviews. I'm not  
2 exactly sure what that means. You mentioned that you  
3 talked with Mr. Peterson and you talked to Joshua Moe at  
4 some point.

5 A. Hm-hmm.

6 Q. Other than those two gentlemen, are there any  
7 other witnesses that you interviewed?

8 A. I know that when Jim and Josh were there  
9 inspecting for the two weeks that they were there off and  
10 on, that there were individual tenants who might come out  
11 and say, hey, you know, what are you putting a ladder up  
12 for, so there, I mean our standard practice would be to  
13 engage that person. If you came out of your condo and,  
14 you know, hey.

15 Q. So if I said what are you doing here, you would  
16 probably talk to me?

17 A. I would say, yeah, I'm seeing some hits here,  
18 can you tell me when that occurred.

19 Q. All right.

20 A. And the consistent theme we heard was that  
21 occurred with that storm three years ago. That occurred  
22 with that storm three years ago.

23 Q. Where are --

24 A. We can't identify, we don't identify who those  
25 people are.

1 Q. Is any of that in the notes? Are there any  
2 witness interviews or notations regarding speaking to  
3 occupants of the various townhomes?

4 A. I don't know. Sometimes Josh puts them in, and  
5 I don't know if he did here. (Examining document.) At  
6 first blush I'm not seeing any here. Yeah, here's -- I  
7 mean I would consider this to be a note.

8 Q. Which Bates stamp page, sir?

9 A. This would be Bates stamped --

10 MS. PHILLIPS: 102.

11 A. -- 102.

12 Q. BY MR. RUDA: And which line?

13 A. I would look at 593 East. See, the first, it  
14 says, "Leak in Unit 593." The only way we're going to  
15 know if there's a leak in 593 is if the person in 593 was  
16 standing there and told us, oh, yeah, I've got a leak.  
17 So, yeah, those kinds of things would typically be as  
18 much as you're going to get in terms of our conversations  
19 with them.

20 Q. Turn to page 103 for a second.

21 A. Sure.

22 Q. On the side of that page, you see it follows the  
23 same pattern, there's a date and then buildings are  
24 identified, or addresses, pardon me, not buildings.

25 A. Yeah.

1 Q. 209-301. But to the side it's written, "roof  
2 repaired," and then it's written, "all buildings have had  
3 roof repaired."

4 A. Correct.

5 Q. Do you see that? What's that in reference to?

6 A. Roof replaced.

7 Q. So which buildings -- are they all the ones that  
8 on identified on this page?

9 A. Well, these are some of the ones, yeah. So 226  
10 Ivy, 509 East, 503 East, these are roofs that would have  
11 been done already.

12 Q. Okay. So at the time you were out there they  
13 were done?

14 A. Yeah.

15 Q. And these roofs reflect impact damage; for  
16 example, 226 Ivy reflects impact damage to west-facing  
17 pillars, multiple impacts to siding and west-facing LE  
18 elevation 20-plus, is that correct?

19 A. Yep, 20-plus hits on the siding, yep.

20 Q. Okay. Do you know if they went on the roofs of  
21 these buildings?

22 A. They did. Yes, I know that they did.

23 Q. And you know that based upon what you indicated  
24 in the report?

25 A. Our conversations with them as well. They were

1 instructed to look at each one of the roofs, even the  
2 ones that had been replaced, albeit they didn't spend a  
3 lot of time on those roofs. There was no reason to.

4 Q. Would you look at 209? At the very top it says,  
5 "Roof repaired, not covered, damage to siding on front."  
6 Do you see that?

7 A. Hm-hmm.

8 Q. What does "Roof repaired, not covered, damage to  
9 siding on front" mean?

10 A. I don't know. I don't know what the "not  
11 covered" means. Unless this is one where temporary  
12 repair work was done. That's how I would interpret that  
13 based on how our guys take field notes, that 209 is one  
14 that the roof had not been replaced yet and, but some  
15 repairs had been done after the storm event.

16 Q. Are you aware of any repairs being done after  
17 the storm event?

18 A. Other than what I just read to you, no.

19 Q. No one's told you that any repairs were done at  
20 the association, right?

21 A. No, they have not.

22 Q. Which building code do you think applies to this  
23 complex, sir, that is Southgate? The International  
24 Residential Code or the International Building Code?

25 A. I think there's three codes that apply; the

1 International existing Building Code applies, the  
2 International Residential Code applies to parts of it and  
3 the International Building Code applies to other parts of  
4 it.

5 Q. What parts of the International Residential Code  
6 apply to as relevant to any opinions you've offered?

7 A. The siding and the roofing, the sheathing, the  
8 wall sheathing, window flashings.

9 Q. How does the International Building Code, in  
10 your opinion, apply at all to the structure?

11 A. Anything that is not within the, the only reason  
12 the International Building Code ever applies to anything  
13 that has a residential code to it is if there is nothing  
14 in the prescriptive -- the International Residential Code  
15 is prescriptive. It is a step-by-step how to build  
16 something. If it is not listed in the prescriptive path,  
17 then engineering is required under the rules of the  
18 International Residential Code. That flips it to the  
19 International Building Code, which is all engineered.

20 Q. Is any part of your opinion then based upon the  
21 International Building Code in regard to this matter or  
22 does it entirely, in terms of your opinion, fall within  
23 the International Residential Code?

24 A. The only reason it falls tangentially into the  
25 International Building Code is because of the zoning of



1 these buildings and how they're put into the zoning part  
2 of the code in terms of --

3 Q. Meaning what? I mean explain what you mean.

4 A. Mixed-used building -- I mean it's not a  
5 mixed-use, it's a multi-family residence. That's the  
6 reason.

7 Q. But under Streamwood's code, doesn't it still  
8 fall under the International Residential Code --

9 A. That's how they --

10 Q. -- based upon how they have placed it and the  
11 descriptive nature of the code?

12 A. Yes.

13 Q. Okay. So it is basically all International  
14 Residential Code?

15 A. Yes.

16 Q. All your opinions are based upon that, not  
17 anything to do with the International Building Code --

18 A. No.

19 Q. -- yes or no? Meaning -- I apologize to the  
20 form of the question.

21 A. My opinions will follow in lockstep with what  
22 the City of Streamwood has classified these buildings as.  
23 How's that for a simple answer?

24 Q. All right. So then your opinions are based upon  
25 the International Residential Code and not the

1 International Building Code in terms of what's in your  
2 report and what you've offered up here in the deposition  
3 today then?

4 A. Correct.

5 Q. Okay. All right.

6 MR. RUDA: I have no other questions.  
7 Christina?

8 MS. PHILLIPS: Can I have a sticker?  
9 (Irmiter Exhibit 13 marked.)

10 MS. PHILLIPS: I don't have another copy of  
11 this, but this is a document that Matt produced last week  
12 at Howard's deposition.

13 EXAMINATION

14 BY MS. PHILLIPS:

15 Q. Tom, I'm going to show you a document marked as  
16 Exhibit No. 13. Can you tell me what that document is?

17 A. This is a storm events database. I've seen  
18 these before. You can order these up from NOAA, and you  
19 can go back, I think ten years roughly, and you can order  
20 it up for, generally for counties. It's cities or  
21 counties. You can't go to NOAA and say give me 1495  
22 Selby Avenue as an address. They don't do that, okay?  
23 These are general area maps.

24 Q. And in fact, that website is the same website  
25 that you would have utilized in pulling the weather data

1 from 2003, '4 and '6 that's in your report, correct?

2 A. Yes, we did, correct.

3 Q. So you're familiar with this database and  
4 website?

5 A. Yes.

6 Q. Counsel earlier directed your attention here to  
7 Exhibit No. 2 and the EagleView documents that referenced  
8 a July 21st, 2013 hail event. If you look at Exhibit  
9 No. 13, is that hail event listed therein?

10 A. No.

11 Q. What's the ending date of the event data listed  
12 within Exhibit No. 13?

13 A. 11/17/2013.

14 Q. Okay. So the date of July 21st, 2013 presumably  
15 would be consumed within the dates from April 5th, 2010  
16 to November 17th, 2013?

17 A. Yes, that's one of the reasons we don't use the  
18 EagleView hail count or hail information. We have found  
19 it to be consistently unreliable. I don't know why  
20 EagleView even lists it because it's not -- anyway, we  
21 don't use it.

22 Q. Okay. And earlier, when Mr. Ruda was asking you  
23 some questions, you had said it's really important to  
24 understand how these are interpreted. What did you mean  
25 by that? And when I mean "these," I'm referring back to

1 the EagleView as part of Exhibit No. 2 from Mr. Moe's  
2 deposition yesterday.

3 A. Yeah, and this is one of the things we found  
4 when we've actually been to sites and looked at these.  
5 Because we do estimating so we order EagleView all the  
6 time, and it says that -- on here they say, "within a  
7 one-mile radius." What they don't tell you is how far  
8 out they go. So these 19 events, they typically start at  
9 a one-mile radius and they go out 20 miles. So you could  
10 have 18 of these that could be 17 miles away from this  
11 property, and it would mislead you to think, if you  
12 didn't understand how to interpret them, that on 7/21/13  
13 there were 19 hail events at this property. That's not  
14 what this says, okay?

15 Q. All right. We talked a lot today about the  
16 difference in what a hail strike on an asphalt shingle  
17 that's seven years old looks like compared to a strike  
18 that's, you know, three years old, correct?

19 A. Hm-hmm.

20 Q. Yes?

21 A. Yes, excuse me.

22 Q. Thank you. Is there a difference between a hail  
23 strike that's three years old and, let's say, this  
24 July 21st, 2013 storm actually happened and you guys went  
25 out on July 30th, so that's nine days; is there a

1 difference between a nine-day-old hail strike and a  
2 three-year-old hail strike?

3 A. Yes.

4 Q. And can you tell me what the difference is?

5 A. Well, one of the terms that is bantered around  
6 in the industry is it's still hot. It looks like hot  
7 tar. I mean it literally is still very, very dark. What  
8 happens with these is, if you look at your coffee cup  
9 here in front of you and it's very black in color, that's  
10 really what your mat looks like at the time it's being  
11 manufactured before the granules are being put onto it,  
12 because that's the color of the asphalt material, it's a  
13 shiny black material. The granules get put onto it in  
14 the manufacturing process. So when those are immediately  
15 brushed off, this is the color that occurs, and this is  
16 actually a pretty good representation, because then you  
17 look at your laptop in front of you and you look at the  
18 typing board here and you see this color that I'm  
19 pointing to (indicating), which is another shade of  
20 black, and then you look at her HP right here and you see  
21 this gray (indicating). If I were to compare these, I  
22 would say this is a fresh hail hit (indicating), this is  
23 a hail hit that's been sometime within the last two years  
24 (indicating), this is a hail hit that's probably five  
25 years or older (indicating).

1 Q. The five-year-old, you're pointing to the  
2 grayish color in the room?

3 A. Yeah. I mean it's really that easy to  
4 distinguish when you're looking at it. Where it gets to  
5 be problematic is when you're in areas in Texas and areas  
6 in Phoenix where we get a lot of dust storms, so we get  
7 dust and things into those, so in those inspections you  
8 actually have to have a whisk broom with you and a rag to  
9 clean dust out so you can see what's going on.

10 Q. And this concept that you've discussed of  
11 identifying the aging, that's something that you've  
12 picked up in your background, training and experience in  
13 performing these types of investigations?

14 A. Yes.

15 Q. As well as your knowledge of the components of a  
16 shingle or things of that nature?

17 A. Well, yeah, and I think that's very important.  
18 It's very interesting, when you're sitting on a roof with  
19 an adjustor from an insurance company, or even other  
20 engineers who practice in this, or consultants who  
21 practice, and you ask them, well, geez, have you ever  
22 been to the factory, have you ever seen how these things  
23 are made? No. They have no concept. To me, that's a  
24 very important part of this is understanding the  
25 products, feeling the products and working with the

1 products, and I've done that with these kinds of shingles  
2 and siding and these things before.

3 Q. How many hail inspections in your career have  
4 you performed?

5 A. Over 7,000.

6 Q. Over what period of time have those inspections  
7 been performed?

8 A. As I said before, when I first started roofing  
9 we were doing hail things, so it's over 40 years.

10 Q. I believe earlier you said you had also looked  
11 at photographs of the hailstones from the date of the  
12 loss --

13 A. Yes.

14 Q. -- and you had those with you?

15 A. I do.

16 Q. I didn't see them in the file materials.

17 A. I think I have them. Oh, yeah, here they are.

18 MS. PHILLIPS: Could I have another sticker  
19 please?

20 (Irmiter Exhibit 14 marked.)

21 Q. BY MS. PHILLIPS: Looks like these are  
22 photographs previously produced, Southgate 4097, 98 and  
23 96.

24 A. Yes.

25 Q. Were those parts of your file materials?

1 A. Yes.

2 Q. And did you rely on these photographs in  
3 formulating your opinions?

4 A. Yes.

5 Q. What about those photographs did you rely upon?

6 A. Well, the 4097 is, I think, one of the more  
7 telling. I would estimate that, based on the hand size,  
8 that this hail is inch and a half on its length side by  
9 about an inch and a quarter. It's obelisk in shape, it's  
10 not truly round, which is typically what hail -- hail  
11 doesn't always come in a round shape. It also, the  
12 person who is holding it, their hand is shiny so it  
13 indicates that it's melting, so that would tell me that  
14 it's actually smaller here in this picture than it was  
15 when it fell. This next picture, which is shown at  
16 night, it has a flashlight, and it shows varying sizes of  
17 hail. I think this is important, because a lot of  
18 people, when they look at a hail report, even our, the  
19 person that you've retained as the weather expert on this  
20 thing, he estimates the hail size, and that's one of the  
21 reasons they do that is because not all hail falls at the  
22 same size, so in a pattern of hail you're going to have  
23 some very large, you're going to have some very small, so  
24 when a meteorologist is saying it's between this and  
25 this, they're taking the average of what they think is



1 going to occur. This is a great picture that shows that.  
2 So we had some pretty large hail and some small hail on  
3 this, which is typical.

4 Q. And did the evidence of the impact marks and the  
5 damage that you saw, were those consistent with what you  
6 looked at in those photographs of varying hail sizes?

7 A. Yes. And in particular on the soft metals, when  
8 you look at the soft metals, there are some pea-size hits  
9 but there's also some larger indentations, and that would  
10 be consistent with that dark photo showing the varying  
11 sizes of hail.

12 Q. Just so we're clear, you're not serving as an  
13 engineer here today or in regard to the report that's  
14 been authored by Forensic Building Science, correct?

15 A. That is correct.

16 Q. Your area of expertise is what again?

17 A. Building failure causation, what causes  
18 buildings of all kinds to fail. That can be defective  
19 construction, it can be improper products, it can be  
20 weather events, it can be manmade causes like fire,  
21 arson, it can be building, vehicles that strike  
22 buildings. It can be all kinds of different events.

23 Q. And in regard to this capacity as a building  
24 causation failure expert, have you been qualified by a  
25 court before?

1 A. Yes.

2 Q. Have you been qualified by multiple courts?

3 A. Yes, I have.

4 Q. And do you know what states?

5 A. Colorado, Minnesota -- I think that's it.

6 Colorado, Minnesota. Federal and district.

7 Q. And in connection with the building causation  
8 failure expertise, have you been qualified as an expert  
9 in events associated with a weather event?

10 A. Yes, yes. The one in the federal court in  
11 Colorado was wind and hail, and it was a three-tab  
12 shingle, and it was on complexes similar to these.

13 Q. We talked today about the application of codes,  
14 correct?

15 A. Yes.

16 Q. And in your report, I actually think, if you  
17 wouldn't mind opening that back up for me again and  
18 looking to page 27 and 28 is going to be where I'm going  
19 to direct your attention.

20 A. Yes.

21 Q. Okay. And I note there's a comment that says,  
22 "The above section was amended and was put in place after  
23 the loss." Do you see that?

24 A. On which page?

25 Q. I'm on page 28. My apologies.

1 A. Yes.

2 Q. It looks like there was an original code that  
3 was in effect at the time of the loss, is that correct?

4 A. That is correct, yes.

5 Q. And it looks like -- well, can you tell me,  
6 based on your background and experience in reading the  
7 codes, what the difference is between the two codes?

8 A. Very little.

9 Q. Okay.

10 A. Yeah.

11 Q. The original code that was in effect, it looks  
12 like it had a date of 2008?

13 A. Yes.

14 Q. That does not appear to have the ITEL exceptions  
15 that we see?

16 A. Correct. This is the building code official, in  
17 talking with them about that, they recognize, as they  
18 should, that there is an alternative design approach that  
19 can be used. This is the building code official and the  
20 city basically, him saying, you know what, I want to go  
21 one step further and I want to have this third-party  
22 source help in making that determination on the siding  
23 issue, and so it relates just to the siding.

24 Q. As for the policy in this case, whether the code  
25 at the time of the loss would apply or whether the code

1 at the time of the replacement would apply, you would  
2 agree that the policy would dictate which code would  
3 apply?

4 A. Yes, that's in the policy.

5 Q. And you're not offering an opinion on that?

6 A. No, I haven't reviewed this insurance policy,  
7 I'm not offering an opinion on that.

8 Q. So to the extent that the policy applies, the  
9 original code, there is no exception for ITTEL?

10 A. Right.

11 Q. And all the siding would need to be replaced?

12 A. Correct.

13 Q. As it relates to the idea of the replacement of  
14 the shingles, am I correct that it's the opinion, both of  
15 yourself as well as the opinion of Mr. Johnson, that the  
16 shingles are being replaced because of the direct  
17 physical loss or damage, not the application of the code?

18 A. Correct. Right, correct. There's not a code  
19 issue related to those that we saw. It's the physical  
20 damage and returning them to a pre-loss condition.

21 Q. When you walked the property, was there a  
22 uniformity to the siding of these buildings?

23 A. Yes.

24 Q. So we had discussed before that the fading was a  
25 little bit different on an elevation depending on

1 shading, do you remember that?

2 A. Yes.

3 Q. As far as the overall appearance, it appeared as  
4 though the buildings were generally in the same  
5 condition; in other words, one building didn't appear to  
6 be 60 years old and one building appeared to be 12 years  
7 old?

8 A. Correct.

9 Q. They all appeared to be about the same age and  
10 use and wear, it's just maybe a certain exposure had a  
11 little bit more fading than something else?

12 A. Yes. And the issue with that is really that  
13 standing 10 feet back or 15 feet back and looking at  
14 siding, the blue siding for example, and saying that  
15 there's a degree of fade that's more on one elevation  
16 than the other is virtually impossible to do with the  
17 human eye until you take the siding off of that building  
18 and try and reclaim it and piece it in onto another  
19 being. That's when you'll notice it.

20 Q. Based on your review of the code, you would  
21 agree with me that the, and the review of Mr. Peterson's  
22 deposition, that the city doesn't permit that piecemeal  
23 or patchwork siding to be done?

24 A. Right, it's an eyesore as far as they're  
25 concerned. Talking to the building code official, that's

1 what they don't want to have happen.

2 Q. So the, I'm going to use the term "salvage," the  
3 taking off of building A and putting it into building C  
4 and D is not permitted under the code?

5 A. It's not permitted under the code. Yeah, it's  
6 just not going to happen.

7 Q. As it relates to the 16 buildings that were  
8 reroofed, your people went up on those roofs, correct?

9 A. Yes.

10 Q. All right. Can I direct your attention in the  
11 report to page 7 of 37?

12 A. Yes.

13 Q. This section actually began on the, on page 6 of  
14 37, it says "Roof and Siding Inspection Methodology," and  
15 if we turn to 7 of 37, partway through this second  
16 paragraph?

17 A. Yep.

18 Q. We see a notation that "we worked across the  
19 roof slope from top to bottom in three to four foot  
20 increments circling each impact location or displaced  
21 shingle," do you see that?

22 A. Yes.

23 Q. That's that process of walking the roof that you  
24 discussed, correct?

25 A. Correct.

1 Q. And if we drop down here (indicating), we see  
2 the sentence that says, "The limited inspections were  
3 performed by accessing the roof of each building," do you  
4 see that?

5 A. Yes.

6 Q. Is that the additional walking of the roof that  
7 you discussed earlier?

8 A. And each building, meaning all 56.

9 Q. The word "briefly" is used within that sentence;  
10 do you see that?

11 A. Yes.

12 Q. You had said earlier that the difference in the  
13 inspections was a two-hour inspection versus a four-hour  
14 inspection?

15 A. Yes.

16 Q. Is that, the use of the word "briefly," is that  
17 the context here?

18 A. Yeah, that's the context.

19 Q. So it's not a matter that they went up there for  
20 five minutes and walked off?

21 A. No.

22 Q. You had said earlier that you noticed a mistake  
23 in your review in the estimate of Josh Moe --

24 A. I did.

25 Q. -- do you remember that?

1 A. Yeah, I did.

2 Q. Can you tell me what that is?

3 MR. RUDA: Objection, this is an  
4 undisclosed opinion.

5 A. Apparently there are 16 buildings. Buildings 1,  
6 9, 10, 13, 15, 16, 21, 22, 26, 32, 45, 51, 52, 53, 55 and  
7 56, that these are the, these represent the 16 buildings  
8 that had new roofs installed on them. He failed to  
9 include in his estimate the siding replacement for these.  
10 So even though we have calculated siding damage on these  
11 16 buildings, his estimate does not show that.

12 MR. RUDA: Can I ask, can I -- you were  
13 reading from a document. What document is that, just so  
14 I know what you're reading from?

15 THE WITNESS: (Indicating.)

16 MR. RUDA: Okay.

17 THE WITNESS: I went through and looked --

18 MR. RUDA: I was just asking because you're  
19 reading from a document.

20 MS. PHILLIPS: We'll mark it.

21 MR. RUDA: You don't have to mark it. I  
22 was just wondering what it is.

23 MS. PHILLIPS: Can I have a sticker,  
24 please?

25 (Irmiter Exhibit 15 marked.)



1 Q. BY MS. PHILLIPS: Okay. Now we've got  
2 Exhibit 15. When did you make that document?

3 A. I made that last night as I was preparing for my  
4 deposition and doing review. Of these, going back then  
5 through his estimate, there are two building sizes.  
6 There's a building size where he has attributed  
7 \$26,228.84 RCV cost for siding-related costs, and there's  
8 a building cost where he has come up with a cost of  
9 \$25,581.80. There are two different size buildings on  
10 the structure. So of the 16 buildings, four of them are  
11 the \$26,228.84 size and 12 of them are the \$25,581 size,  
12 and when you multiply those together using his numbers,  
13 it comes up to roughly \$412,000. When you then take the  
14 10 and 10 that he has taken, which is a reasonable markup  
15 for contractors to take, he ends up at just shy of  
16 \$500,000 that he is deficient on his estimate. That does  
17 not include additional costs for general conditions,  
18 dumpsters, those kinds of things that would be attributed  
19 to that, so I would ballpark it at about \$525,000 that  
20 his estimate appears to be deficient.

21 Q. That is based on your background, training and  
22 experience in putting together estimates at FBS?

23 A. Well, yeah, and my training in Xactimate. I was  
24 one of the first people in the country to use Xactimate  
25 when it first came out and I've been using it ever since.

1 We produce an average of 25 estimates a week through our  
2 office.

3 Q. And I'm going to separate back, we've got his  
4 estimate previously marked --

5 A. Do you want me to separate this?

6 Q. -- so let's not clip that because this is your  
7 copy.

8 A. That's mine.

9 Q. All right. I want to touch on something real  
10 quick. There was a discussion before about the reference  
11 to the Haag materials. Could you explain to me how it  
12 was that you considered or reviewed the Haag materials  
13 that were addressed earlier?

14 A. We sent our people to Haag, and I've  
15 participated in some of the Haag stuff simply because the  
16 industry seems to have attempted to, the insurance  
17 industry seems to have attempted to put them out as the  
18 definitive source for all things to do with roofing. I  
19 have heard it stated numerous times that the term "the  
20 Haag standard" is used, trying to indicate that it has  
21 been a standard that has been adopted by either, by  
22 someone, by the building code councils, by ASTM, by ANSI,  
23 by any recognized engineering community in the world.  
24 And based on the research that I did when I started  
25 hearing that, I found no definitive source that has

1 endorsed what they do as a standard. It is simply their  
2 opinion. It is the things that they do and it is their  
3 opinion. And we're all entitled to have our opinions,  
4 we're all entitled to shoot ice balls at products and do  
5 all kinds of things and extrapolate from that that this  
6 is what's going to happen, but to call it a standard I  
7 think is improper, and so I thought it was important that  
8 our people should go through some of that just to, just  
9 to see what's being taught.

10 I would argue that it's a great course for  
11 someone like you, Counselor, if you wanted to learn  
12 everything there was about roofing products for the first  
13 two or three days and about how to install them and those  
14 kinds of things, it's great. I think the second part  
15 that gets into some of their causation theories and what  
16 causes damage is problematic.

17 Q. We talked a little bit about wind damage to the  
18 property. Would it be a fair statement that the majority  
19 of the damage that you and your team discovered was hail  
20 damage?

21 A. Yes.

22 Q. You also identify a number of the resources and  
23 materials, 3 of 37 and 4 of 37, that were reviewed or  
24 considered in formulating your opinions, correct?

25 A. Yes.

1 Q. Even though those materials weren't relied upon  
2 for formulating a specific opinion, they were considered  
3 in putting together your report, is that correct?

4 A. Yes, yes.

5 Q. We talked a little bit about the application  
6 process. You would defer to Mr. Johnson as far as what  
7 the city would, the Village of Streamwood would approve  
8 or not approve as far as applications for permits and  
9 whether or not variances would be allowed, correct?

10 A. Yes.

11 Q. Okay. And to the extent permits were pulled  
12 with the replacement of the 16 roofs, or partial requests  
13 for partial, were requested for partial replacements, you  
14 would defer to him?

15 A. Yes.

16 Q. All of the materials that we've looked at today,  
17 as well as those discussed within your report, is it  
18 reasonable and customary for someone such as yourself in  
19 putting together a report like this and formulating  
20 opinions to rely on that information?

21 A. Yes.

22 Q. Okay. And have all of the opinions that you've  
23 offered here today, as well as those contained within  
24 your report, been to a reasonable degree of certainty in  
25 the field of building causation failures, as well as

1 based on your experience in estimating?

2 A. Yes, yes.

3 MS. PHILLIPS: I don't have anything  
4 further.

5 FURTHER EXAMINATION

6 BY MR. RUDA:

7 Q. Mr. Irmiter, what California federal court  
8 qualified you?

9 A. Colorado.

10 Q. Was it federal or state?

11 A. Federal.

12 Q. So what was the name of that case that you were  
13 qualified in?

14 A. It's in my CV.

15 Q. Can you tell me which one it is?

16 A. Let me take a look and I'll tell you.

17 (Examining document.) Windsor Court, LLC versus American  
18 Family.

19 Q. So Windsor Court, LLC versus American Family?

20 A. Yep.

21 Q. Do you have the number of the case in there,  
22 too?

23 A. Yes. It's Colorado Case

24 No. 2011-CV-01904-CMA-KLM.

25 Q. All right. And is that the only case in which

1 you've been qualified in court to testify as to a weather  
2 event similar to this one that caused damage because of  
3 wind and hail?

4 A. No. Interlachen Property Owners Association  
5 versus American Family, 2013, Hennepin County, Minnesota  
6 Court, 27-CV-11-12855, Judge Bruce Peterson.

7 Q. Well, was that a lawsuit against American Family  
8 or was it a dispute over whether the appraisal was  
9 proper?

10 A. That's a lawsuit against American Family.

11 Q. Was that after the appraisal was determined to  
12 be --

13 A. Yes.

14 Q. -- invalid?

15 A. It was determined to be invalid and then it went  
16 to the jury and I testified as to causation and damages.

17 Q. Let me ask you. Have you ever been determined  
18 to not be qualified to offer up opinions in any matter in  
19 which you've been retained, sir?

20 A. One time, yes.

21 Q. What's the name of that case?

22 A. Eight years ago. I don't remember. Morrissey,  
23 I think. Something like that.

24 Q. That's here in Minnesota, wasn't it?

25 A. Yep.

1 Q. Morrissey versus who, do you know?

2 A. I can't remember.

3 Q. Is it in your CV?

4 A. No.

5 Q. Can you find that case? Do you have a record of  
6 it back at your office somewhere?

7 A. I don't know if I do or not.

8 Q. Who was the lawyer that retained you in that  
9 case?

10 A. Briggs and Morgan.

11 Q. Why were you determined not to be an expert in  
12 that case, as you understand it?

13 A. As I understand it, it was a fraudulent  
14 concealment case of a contractor who was hired to remodel  
15 a home and during the remodeling process found rot and  
16 mold and covered it over without disclosing it and  
17 finished a massive whole-house remodeling for a client.

18 Q. So how is it that you were, as you understand  
19 it, what the court said why you weren't qualified to  
20 offer opinions in that case? What was the basis for the  
21 judge's decision?

22 A. I was asked to give an opinion on the duties and  
23 responsibilities of a licensed general contractor when I  
24 did not hold a license as a contractor at the time.

25 Q. Okay.

1           A.     My licensing as a building code official  
2     supersedes that and allows me to make those kind of  
3     opinions today, but back at that period of time I didn't  
4     have one.

5           Q.     You're not a licensed general contractor in  
6     Illinois, is that correct?

7           A.     No, no.

8           Q.     You're not a licensed building official in  
9     Illinois, is that?

10          A.     No, they don't offer it. If they did, I would  
11     be.

12          Q.     You are not?

13          A.     I am not, that is correct.

14          Q.     And you hold no licenses whatsoever in Illinois,  
15     is that correct?

16          A.     That is correct.

17          Q.     You mentioned just moments ago that you had,  
18     your opinion in this matter is predicated not upon any  
19     code upgrade requirements, I believe. I think your  
20     opinion is that because of the hail event and the  
21     physical loss sustained to the roofs and the siding at  
22     the Southgate complex, that that's why you have the  
23     opinion that they all need to be replaced in order to be  
24     returned to their pre-loss condition; is that a correct  
25     summation of your opinion?



1 MS. PHILLIPS: Objection to the form.

2 A. No, it's not correct.

3 Q. BY MR. RUDA: All right. Let's go back then.  
4 You agree with me that you are suggesting that shingles  
5 that are undamaged need to be replaced based upon what  
6 we've been discussing?

7 A. Well, a roof is a system.

8 Q. I understand.

9 A. So the entire roofs have to be replaced because  
10 of the physical damage caused by the hail.

11 Q. Okay. So it is your opinion that all the roofs  
12 have to be replaced because of the physical damage caused  
13 by the hail that you and your employees determined, is  
14 that correct?

15 A. Yes.

16 Q. Even the undamaged shingles need to be replaced,  
17 is that correct?

18 A. Yes.

19 Q. And in regard to siding, do you have the opinion  
20 that undamaged siding, let's say on the side of the  
21 building, has to be replaced as well?

22 A. There are some buildings that have three sides  
23 damaged, there are some buildings that have two sides  
24 damaged, and there are some buildings that have one side  
25 damaged. We calculated that in our report.

1 Q. So is that --

2 A. All of those physically damaged sides must be  
3 replaced as a result of the damage. The remaining sides  
4 that are undamaged must be replaced, in my opinion,  
5 because of the fact that the siding is no longer  
6 manufactured and it does not match.

7 Q. Okay. All right. So let's go to matching. In  
8 the state of Illinois, is matching of siding required in  
9 your opinion, sir? Let's say there's an undamaged side  
10 of the building and -- strike that. In Illinois, as you  
11 understand it, does it require the matching of siding for  
12 undamaged sides of the building, assuming there's one  
13 side that has some damage?

14 MS. PHILLIPS: Objection to the form of the  
15 question, calls for a legal conclusion.

16 A. Yeah. That's a legal conclusion. I don't think  
17 that's been vetted out in your court system yet.

18 Q. BY MR. RUDA: I may disagree, but --

19 A. I'm sure you will.

20 Q. -- you just offered the opinion that matching is  
21 required. What do you base your opinion on?

22 A. What's that?

23 Q. You just offered the opinion that matching --

24 A. No, I said the siding is no longer manufactured  
25 so how am I going to put siding that is no longer

1 manufactured into siding that is currently manufactured  
2 and have it work? It's not tested that way. The siding  
3 has to be installed per the manufacturer's published  
4 instructions, just like the roofing. So tell me,  
5 Counselor, how am I going to take siding that I don't  
6 know who manufactures it, who makes it, and I have no  
7 installation instructions, and now I have new siding made  
8 by Alcoa, or whoever, that is tested for wind resistance,  
9 it's tested for water intrusion resistance, it meets all  
10 of the code requirements, it has an ICC code report on  
11 it, and how am I going to put that on the building and  
12 tie it into something that isn't tested? I can take the  
13 insides of her pen and I can take the insides of your pen  
14 and I can take them apart and I can jam them together and  
15 I can get them to work but that's not how they were  
16 designed to work, and they will fail much quicker than if  
17 they were left alone, the way they were tested. That's  
18 why the siding needs to be replaced.

19 Q. So it's your opinion that undamaged sides to  
20 individual buildings at Southgate have to be replaced  
21 because you have to replace, let's say, one side of one  
22 of the buildings?

23 A. Yeah. Siding is a system.

24 Q. Okay.

25 A. It's a cladding component system under the

1 building code.

2 Q. It has nothing to do with matching, sir?

3 A. I don't care about the matching issue. I'm  
4 not --

5 Q. I do. I'm asking a question. That has nothing  
6 to do with matching, is that correct?

7 A. No.

8 Q. Yes or no?

9 A. It has nothing to do with matching.

10 Q. Okay, you agree with me. So your opinion that  
11 in regard to the siding, all of it being replaced, is  
12 because if you replace a single piece of siding on a  
13 building in order for the building, as you've described  
14 it, to be properly secure from water intrusion, et  
15 cetera, all the siding must be replaced, is that correct?

16 A. Correct.

17 Q. Now you just offered up the opinion that you  
18 don't believe the Illinois courts have spoken as to the  
19 issue of matching. What do you base that statement on?

20 A. Just my, in the practice that I'm in I enjoy, as  
21 an avocation, reading case law. It's one of the things I  
22 like doing. And I haven't found anything in the case law  
23 work that I've done in terms of reviewing stuff in  
24 Illinois that's really addressed the matching issue the  
25 way that Minnesota has, for example, recently.

1 Q. Well, Minnesota has a statute, pardon me,  
2 Minnesota law requires matching, correct?

3 A. Yes, it does.

4 Q. Is that pursuant to a court opinion or a  
5 statutory --

6 A. I think it's been codified by the courts  
7 recently within the last six months.

8 Q. And you haven't read in your studies any  
9 Illinois cases that address the concept of matching, is  
10 that correct?

11 A. Oh, I have, I just think it's an open question  
12 at this point. But, again, that's a legal opinion. I'm  
13 not an attorney. That's a layman giving you his take on  
14 it.

15 Q. And again, just so we're clear, none of your  
16 opinions are based upon your understanding of, I guess to  
17 use your term, the law of matching as you understand it,  
18 is that correct?

19 MS. PHILLIPS: I'm going to object to the  
20 form of the question, calls for a legal conclusion.

21 A. Yeah, I mean I've already said that I think it's  
22 an open question in your state right now.

23 Q. BY MR. RUDA: Are your opinions based upon what  
24 your perspective is concerning matching and the concept  
25 that you just described; that is, obviously we're talking

1 about insurance policies and matching?

2 A. No, not in terms of insurance policies.

3 Q. Okay. In your own --

4 A. In terms of what makes common sense to a  
5 consumer and the expectation that they might have, and  
6 that I might have as a consumer living at this  
7 association and not wanting to have buildings that all  
8 look different, I have an opinion on that. I get to have  
9 that opinion, you know.

10 Q. In regard to, you were asked a few questions  
11 moments ago about the permitting process and the building  
12 code requirements. The building code that was in place  
13 before the amendment, which was, I guess, after this loss  
14 occurred, so would you turn to page 28 of 37 of your  
15 report?

16 A. Okay. 28, you said?

17 Q. Yeah, 28 of 37 in your report.

18 A. Okay.

19 Q. You wrote in the middle of the report, that's  
20 the old code provision, correct?

21 A. Yes.

22 Q. And you said that that requires replacement of  
23 shingles and replacement of siding in the event that  
24 there's any damage, correct?

25 A. Right.

1 Q. So did you address the part of this ordinance  
2 that says, "where the covenants and the restrictions on  
3 the property require the exterior of the units to have  
4 consistent colors and materials," is that part of your  
5 assessment in this matter?

6 A. Yes.

7 Q. Well, did you also assess the fact that the  
8 section states at the end, and I quote, "if the entire  
9 multi-family structure is not replaced at the same time,  
10 and subject to subsection D2 herein, a letter of approval  
11 is required by the other dwelling unit owners prior to  
12 the permit being issued," did you address that in any of  
13 your opinions in this matter?

14 A. Well, no, I mean it speaks for itself.

15 Q. Right.

16 A. Yeah.

17 Q. So actually the code provision actually says  
18 that, by saying that you get permission from other unit  
19 owners to do partial replacement contemplates partial  
20 replacement, does it not?

21 A. No.

22 MS. PHILLIPS: Objection, form of the  
23 question, foundation.

24 A. No, that's not what it says.

25 Q. BY MR. RUDA: Is that your understanding of the

1 section --

2 A. That's not my interpretation as a trained  
3 building code official. No, it just says, you know,  
4 what, you can go ahead and start doing three at a time if  
5 you want, but you can't -- it doesn't say you can do  
6 partials. It says you can sequence these jobs depending  
7 on your cash flow and your ability to pay for them. It's  
8 not saying you have to, you have to be held to do all 56  
9 within a two-week period or something like that.

10 Q. And you would agree --

11 A. It contemplates that these are going to take a  
12 period of time to do.

13 Q. And you agree that on page 27 of 37, which is  
14 the current code requirement, doesn't it say the entire  
15 thing at the end of the first section on page 27, as I  
16 just read, if the entire multi-family structure is not  
17 replaced at the same time, and subject to subsection D2  
18 herein, a letter of approval is required by the other  
19 dwelling unit owners prior to the permit being issued?

20 A. Yeah, it says the same thing. They both say the  
21 same thing.

22 Q. And so I assume your interpretation of that is  
23 it only relates to when you're doing replacements over a  
24 period of time as opposed to at the same time?

25 A. Correct.



1 Q. In a 56 --

2 A. It's a cash flow issue.

3 Q. In a 56-unit complex, you would agree with me  
4 that not every roof would be replaced the same day,  
5 correct?

6 A. Oh, no, they wouldn't at all.

7 Q. They would be replaced over a period of time, is  
8 that correct?

9 A. Correct.

10 Q. So in regard to any roof replacement, are you  
11 saying that with both of these ordinances, the older one  
12 and the current one say that the other owners have to  
13 agree that when roofs are being replaced they have to all  
14 agree to that for the process to take place?

15 A. Yes.

16 MS. PHILLIPS: Objection, foundation.

17 Q. BY MR. RUDA: Okay. Would you look at the new  
18 section of the code a second? The line that says, "Where  
19 the structure consists of multi dwelling units, the  
20 improvement for all of the dwelling units shall be  
21 replaced at the same time whenever possible." Do you see  
22 that? Second line of the --

23 A. Yes, yep.

24 Q. Do you understand that to mean that when it's  
25 possible they should all be replaced at the same time?

1 MS. PHILLIPS: Objection, foundation, form  
2 of the question.

3 A. They're not talking about 56 buildings in that  
4 sentence. They're talking about a building that has  
5 eight dwelling units. So they don't want you to replace  
6 the siding on your dwelling unit and the siding on  
7 Christina's dwelling unit on the other side of the  
8 building but not replace the court reporter's and mine.  
9 They want you to do the whole building.

10 Q. BY MR. RUDA: Okay. And you would agree that  
11 the --

12 A. That's what a dwelling, that's how that's  
13 defined in the building code. It's the dwelling unit is  
14 the individual unit. You can have anywhere from one  
15 dwelling, which is a single-family dwelling, up to a  
16 ten-plex, which is, you know, ten units.

17 Q. Sure. But here we're talking about all four --

18 A. Four units, right. So they're saying, and the  
19 way that I interpret this and our discussions with the  
20 building code official, they're basically saying when you  
21 go ahead and start doing these things and you're going to  
22 do Building No. 35, you're doing Building 35. You're not  
23 doing half of Building 35, you're doing the whole thing.

24 Q. So you read this ordinance to mean, where it  
25 says, "Where the structure consist of multi dwelling

1 units, the improvement for all the dwelling units," you  
2 construe that to mean that the ordinance is only talking  
3 about a single structure?

4 A. Exactly, with how many -- dwelling units and  
5 building structure are two different things within the  
6 building code, yeah.

7 Q. And you would agree with me that this, both the  
8 old and the new section of the statutes apply to  
9 single-family homes, correct?

10 A. Yes.

11 Q. In terms of the opinions you just offered here  
12 about Mr. Moe failing to calculate siding replacement on  
13 certain buildings?

14 A. Yeah.

15 Q. It's based upon your review of his estimate?

16 A. That's all it is, yeah.

17 Q. Okay.

18 A. Yeah.

19 MR. RUDA: I have no other questions.

20 MS. PHILLIPS: We'll reserve signature.

21 (Proceedings concluded at 2:52 p.m.)  
22  
23  
24  
25

## 1 REPORTER'S CERTIFICATE

2 STATE OF MINNESOTA )  
3 ) ss.  
4 COUNTY OF CARVER )

5 I hereby certify that I reported the deposition of  
6 THOMAS IRMITER on the 13th day of May, 2014, in  
7 Minneapolis, Minnesota, and that the witness was by me  
8 first duly sworn to tell the truth;

9 That the testimony was transcribed by me and is a  
10 true record of the testimony of the witness;

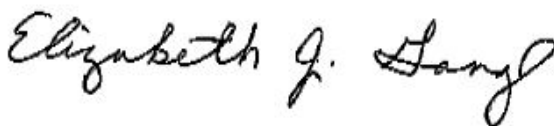
11 That the cost of the original has been charged to  
12 the party who noticed the deposition, and that all  
13 parties who ordered copies have been charged at the same  
14 rate for such copies;

15 That I am not a relative or employee or attorney or  
16 counsel of any of the parties, or a relative or employee  
17 of such attorney or counsel;

18 That I am not financially interested in the action  
19 and have no contract with the parties, attorneys, or  
20 persons with an interest in the action that affects or  
21 has a substantial tendency to affect my impartiality;

22 That the right to read and sign the deposition by  
23 the witness was reserved;

24 WITNESS MY HAND AND SEAL THIS 18th day of May, 2014.

25 

Elizabeth J. Gangl  
Notary Public, Carver County, Minnesota  
My commission expires 01/31/2015

Case Name: *Southgate Townhome Association, v. Allstate Insurance Company*

Witness Signature

Date \_\_\_\_\_

Reporter: Elizabeth Gangl

JUN 24 2014